



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

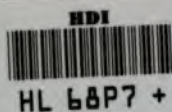
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



Interstate Commerce Commission.

THIRD ANNUAL CONVENTION
OF
RAILROAD COMMISSIONERS.

MARCH, 1891.

HARVARD
LAW
LIBRARY



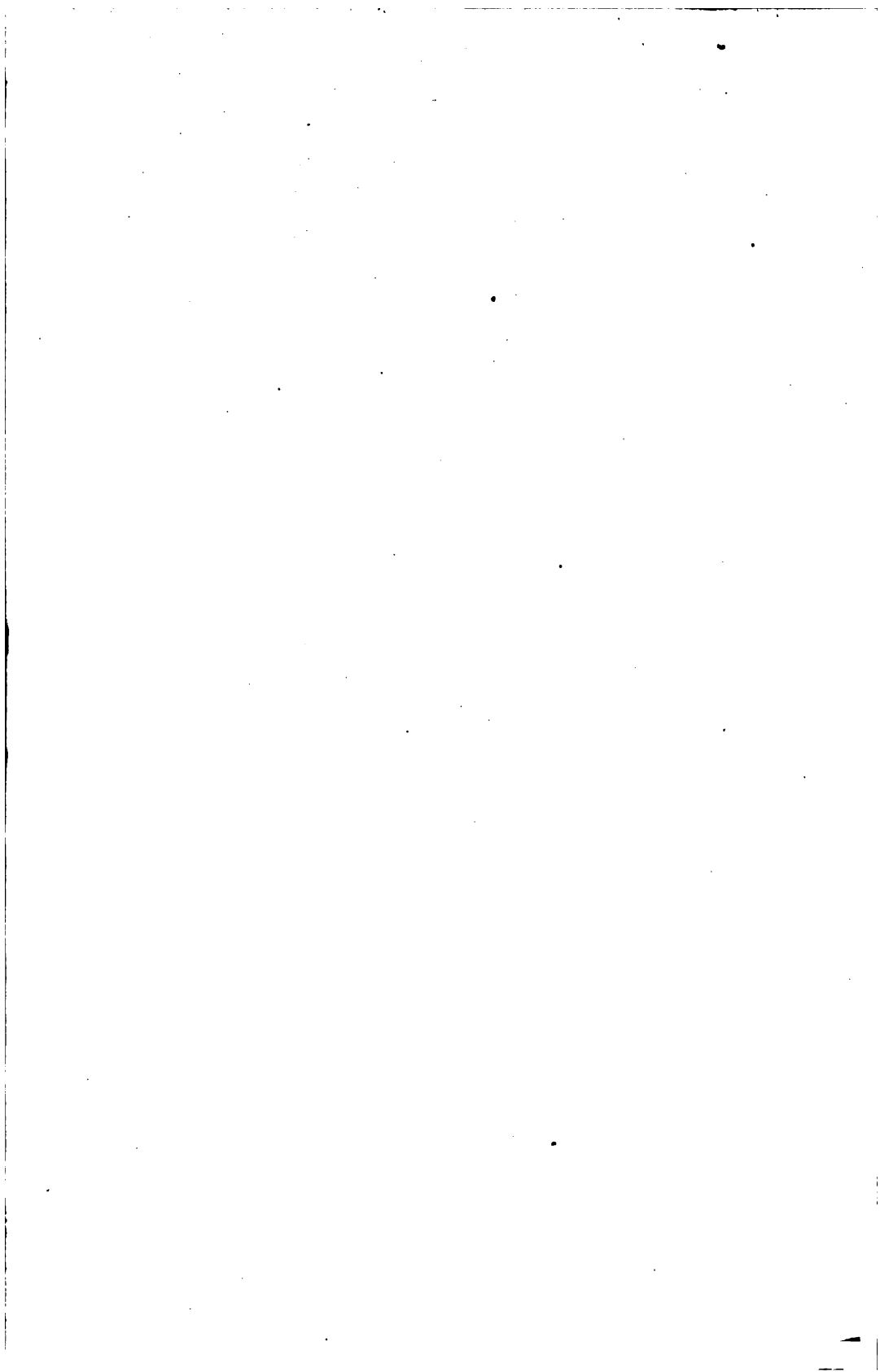
HARVARD LAW LIBRARY

GIFT OF

Bureau of Railway Economics.

Received NOV 15 1916





95
PROCEEDINGS



A NATIONAL CONVENTION

OF

RAILROAD COMMISSIONERS,

HELD AT THE OFFICE OF THE

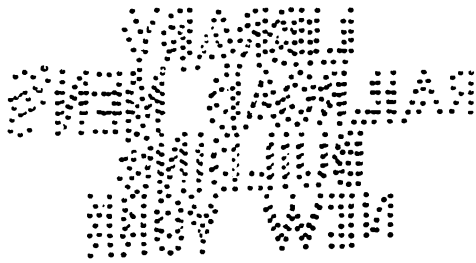
INTERSTATE COMMERCE COMMISSION.

WASHINGTON, D. C., MARCH 3, 4, 1891.

WASHINGTON, D. C.:

1891.

5
19
521
1 N



NOV 15 1916

ORGANIZATION OF THE CONVENTION.

CHAIRMAN.

THOMAS M. COOLEY.

VICE-CHAIRMAN.

GEORGE G. CROCKER.

SECRETARY.

EDWARD A. MOSELEY.

ASSISTANT SECRETARY.

MARTIN S. DECKER.

COMMITTEES FOR THE BUSINESS OF THIS CONVENTION.

COMMITTEE ON ORDER OF BUSINESS.

GEORGE M. WOODRUFF, of Connecticut.

SPENCER SMITH, of Iowa.

WILLIAM HIMES, of Florida.

WILLIAM E. ROGERS, of New York.

DAVID N. MORTLAND, of Maine.

COMMITTEE ON RAILWAY LEGISLATION.

GEORGE G. CROCKER, of Massachusetts.

W. S. GARBER, of Nebraska.

HENRY R. SHORTER, of Alabama.

SAMUEL E. PINGREE, of Vermont.

JOHN T. RICH, of Michigan.

GEORGE M. WOODRUFF, of Connecticut.

CONVENTION OF RAILROAD COMMISSIONERS.

COMMITTEE ON REASONABLE RATES.

W. B. FLEMING, of Kentucky.
WALKER MCLAURIN, of Mississippi.
DAVID N. MORTLAND, of Maine.
JOHN B. BREATHITT, of Missouri.
JOHN H. KING, of South Dakota.

COMMITTEE ON UNIFORMITY OF RAILWAY ACCOUNTS.

WILLIAM O. SEYMOUR, of Connecticut.
ISAAC N. PHILLIPS, of Illinois.
ISAAC B. BROWN, of Pennsylvania.

COMMITTEES TO REPORT TO NEXT CONVENTION.COMMITTEE TO SECURE CONGRESSIONAL ACTION IN REGARD TO
SAFETY APPLIANCES.

GEORGE G. CROCKER, of Massachusetts.
JAMES C. HILL, of Virginia.
SPENCER SMITH, of Iowa.
WILLIAM E. ROGERS, of New York.
JOHN H. KING, of South Dakota.
EDWARD A. MOSELEY, *Secretary*.

COMMITTEE ON REASONABLE RATES.

W. B. FLEMING, of Kentucky.
WALKER MCLAURIN, of Mississippi.
DAVID N. MORTLAND, of Maine.
JOHN B. BREATHITT, of Missouri.
JOHN H. KING, of South Dakota.
CHARLES R. WHITMAN, of Michigan.
J. W. LUKE, of Iowa.

COMMITTEE ON UNIFORMITY OF RAILWAY ACCOUNTS.

WILLIAM O. SEYMOUR, of Connecticut.
ISAAC N. PHILLIPS, of Illinois.
ISAAC B. BROWN, of Pennsylvania.

COMMITTEE ON DISCRIMINATIONS FROM USE OF PRIVATE CARS
OF SHIPPERS.

JOHN R. WHEELER, of Illinois.
JOHN F. HAGER, of Kentucky.
ROSCOE L. BOWERS, of Maine.
LUCIEN N. BRUNSWIG, of Louisiana.
GEORGE H. WALSH, of North Dakota.

COMMITTEE ON RAILWAY LEGISLATION.

GEORGE M. WOODRUFF, of Connecticut.
WILLIAM R. MORRISON, of the Interstate Commerce
Commission.
W. S. GARBER, of Nebraska.
HENRY R. SHORTER, of Alabama.
SAMUEL E. PINGREE, of Vermont.
WILLIAM HIMES, of Florida.

Mr. WOODRUFF is named as chairman in the place of Mr. CROCKER, who asked to be excused from service.

Commissioner MORRISON is named in the place of JOHN T. RICH, who is no longer in office. At his request he is not named as chairman of the committee.

COMMITTEE ON TERRITORIAL ASSIGNMENT OF STATISTICS OF
OPERATION.

THOMAS J. STEWART, of Pennsylvania.
JOHN P. WILLIAMS, of Minnesota.
D. P. DUNCAN, of South Carolina.
THOMAS H. BENTON, of Nebraska.
THOMAS THOMPSON, of Wisconsin.

COMMITTEE TO CALL NEXT CONVENTION.

THOMAS M. COOLEY.
EUGENE P. JERVEY, of South Carolina.
LEON G. BAGLEY, of Vermont.
EDWARD L. FREEMAN, of Rhode Island.
WILLIAM M. LIGGETT, of North Dakota.
EDWARD A. MOSELEY, *Secretary*.

CONVENTION OF RAILROAD COMMISSIONERS.

MEMBERS OF THE CONVENTION AND PERSONS IN
ATTENDANCE BY INVITATION.

INTERSTATE COMMERCE COMMISSION.

THOMAS M. COOLEY, *Chairman.*

WILLIAM R. MORRISON,

WALTER L. BRAGG,

WHEELOCK G. VEAZEY,

MARTIN A. KNAPP,

*Commissioners.*EDWARD A. MOSELEY, *Secretary.*C. CURTICE MCCAIN, *Auditor.*HENRY C. ADAMS, *Statistician.*MARTIN S. DECKER, *Docket Clerk.*

STATE RAILROAD COMMISSIONERS AND ACCREDITED REPRESENTATIVES.

Connecticut-----GEORGE M. WOODRUFF,
WILLIAM O. SEYMOUR,
Commissioners.

Florida -----WILLIAM HIMES,
Commissioner.

Illinois -----JOHN R. WHEELER,
ISAAC N. PHILLIPS,
W. L. CRIM,
Commissioners.
JAMES H. PADDOCK, *Secretary.*
CHARLES HANSEL,
Consulting Engineer.

Iowa-----J. W. LUKE,
FRANK T. CAMPBELL,
SPENCER SMITH,
Commissioners.

Kentucky -----W. B. FLEMING,
JOHN F. HAGER,
Commissioners.

ORGANIZATION OF THE CONVENTION.

7

<i>Louisiana</i>	LUCIEN N. BRUNSWIG, <i>Accredited Representative.</i>
<i>Maine</i>	DAVID N. MORTLAND, ROSCOE L. BOWERS, <i>Commissioners.</i>
<i>Massachusetts</i>	GEORGE G. CROCKER, EVERETT A. STEVENS, <i>Commissioners.</i>
<i>Michigan</i>	CHARLES R. WHITMAN, <i>Commissioner.</i>
<i>Minnesota</i>	JOHN P. WILLIAMS, WILLIAM M. LIGGETT, <i>Commissioners.</i> A. K. TEISBERG, <i>Secretary.</i>
<i>Nebraska</i>	THOMAS H. BENTON, J. C. ALLEN, <i>Members State Board of Transportation.</i>
<i>New York</i>	WILLIAM E. ROGERS, MICHAEL RICKARD, <i>Commissioners.</i>
<i>North Dakota</i>	GEORGE H. WALSH, ANDREW SLOTTEN, <i>Commissioners.</i> R. W. STEVENS, <i>Assistant Secretary.</i>
<i>Ohio</i>	GEORGE E. SMITH, <i>Chief Clerk, Representing the Railroad Commissioner.</i>
<i>Pennsylvania</i>	THOMAS J. STEWART, <i>Secretary of Internal Affairs.</i> ISAAC B. BROWN, <i>Deputy Secretary of Internal Affairs.</i>
<i>Rhode Island</i>	EDWARD L. FREEMAN, <i>Commissioner.</i>
<i>South Carolina</i>	D. P. DUNCAN, EUGENE P. JERVEY, <i>Commissioners.</i>
<i>South Dakota</i>	JOHN H. KING, <i>Commissioner.</i>

CONVENTION OF RAILROAD COMMISSIONERS.

Vermont ----- LEON G. BAGLEY,
 AMORY DAVISON,
Commissioners.
 ALFRED E. WATSON, *Clerk.*

Virginia ----- JAMES C. HILL,
Commissioner.

Wisconsin ----- THOMAS THOMPSON,
Commissioner.

Also—

AUGUSTUS SCHOONMAKER,
Ex-Interstate Commerce Commissioner.
 LORENZO S. COFFIN,
Ex-Railroad Commissioner of Iowa.
 GEORGE E. STARBIRD,
*Representing the Switchmen's Mutual Aid Association
 of North America.*
 WILLIAM G. RICE,
Vice-President, Consolidated Car-Heating Co.
 J. B. THOMAS.
 F. W. PARSONS.

ASSOCIATION OF AMERICAN RAILWAY ACCOUNTING OFFICERS.

M. RIEBENACK,
 CUSHMAN QUARRIER,
 D. A. WATERMAN,
 C. I. STURGIS,
 S. M. WILLIAMS,
 C. P. LELAND,
 RICHMOND ANDERSON,
Representing the Executive Committee.

REPRESENTATIVES OF THE PRESS.

JAMES PEABODY, *Editor Railway Review, Chicago, Ill.*
 JEROME J. WILBER, *Associated Press, Washington, D. C.*
 WILLIAM B. BRYAN, *Washington Star, Washington, D. C.*
 G. F. GLOVER, *Washington Critic, Washington, D. C.*

PROCEEDINGS OF THE CONVENTION.

WASHINGTON, D. C., *March 3d*, 1891.—11 o'clock a. m.

The Convention was called to order by Honorable THOMAS M. COOLEY, chairman of the committee to call the Convention:

The CHAIRMAN: As chairman of the committee that has made the call for this meeting, it perhaps devolves upon me to call the meeting to order, which I now do. The Secretary of the last meeting will read the call.

The SECRETARY read as follows:

At a Convention of Railroad Commissioners held at the city of Washington on the 6th day of March, 1889, the following resolution was adopted:

Resolved, That it is the opinion of the members of this Convention that provision should be made for annual conventions of the Railroad Commissioners of the several States and the members of the Interstate Commerce Commission, to be held at such place as may be agreed upon, with a view of perfecting uniform legislation and regulation concerning the supervision of railroads.

In pursuance of this resolution a Convention was held at the city of Washington, beginning on the 28th day of May, 1890, at which the undersigned were appointed a committee to call the next Convention.

Under the authority conferred upon them the undersigned designate the 3d day of March, 1891, at 11 o'clock in the forenoon, as the time, and the office of the Interstate Commerce Commission, No. 1317 F street, Sun Building, in the city of Washington, D. C., as the place, for the holding of said Convention.

The Railroad Commissioners of all the States and any State officers charged with any duty in the supervision of railroads or railroad interests are respectfully requested to attend: The American Association of Railway Accounting Officers is also invited to meet with the Commissioners or to send delegates to the Convention for the discussion of such questions of special interest to their Association as may arise at the meeting.

The undersigned respectfully suggest the following as subjects which may usefully be considered by the Convention:

I. RAILWAY LEGISLATION:

How harmony therein may be attained.

II. UNIFORMITY IN RAILWAY ACCOUNTING:

What further is important to that end.

III. TERRITORIAL ASSIGNMENT OF STATISTICS OF OPERATION:

Whether this is not practicable, and what principles should control in grouping railway statistics.

IV. APPORTIONMENT OF EXPENSES TO FREIGHT AND PASSENGER TRAFFIC:

What reasons there are for making such an apportionment, and what rules should be adopted.

V. SAFETY APPLIANCES FOR RAILROAD CARS:

What legislation, if any, should be had by Congress.

VI. REASONABLE RATES:

What are, and the elements to be considered in the determination thereof.

In offering these suggestions it is not intended that they shall be understood as excluding any other topics affecting

State and interstate commerce which could properly come before and be entertained by such a Convention.

THOMAS M. COOLEY,	}	<i>Committee.</i>
<i>Chairman,</i>		
E. W. KINSLEY,		
Of Massachusetts,		
I. A. SPALDING,		
Of Kentucky,		
D. P. DUNCAN,		
Of South Carolina,		
J. P. WILLIAMS,		
Of Minnesota,		

WASHINGTON, D. C., *December 18th*, 1890.

The CHAIRMAN: The Secretary, I presume, has made up, as far as he has been able, a list of those who have come here for the purpose of attending this Convention, and I will ask him to read that also.

The SECRETARY read as follows:

INTERSTATE COMMERCE COMMISSION.

THOMAS M. COOLEY.
 WILLIAM R. MORRISON.
 WALTER L. BRAGG.
 WHEELOCK G. VEAZEY.
 MARTIN A. KNAPP.
 EDWARD A. MOSELEY, *Secretary.*

STATE RAILROAD COMMISSIONERS AND OTHERS.

Connecticut ----- GEORGE M. WOODRUFF.
 WILLIAM O. SEYMOUR.

Florida ----- WILLIAM HIMES.

Illinois ----- JOHN R. WHEELER.
 ISAAC N. PHILLIPS.
 W. L. CRIM.
 JAMES H. PADDOCK, *Secretary.*
 CHARLES HANSEL,
Consulting Engineer.

CONVENTION OF RAILROAD COMMISSIONERS.

<i>Iowa</i>	J. W. LUKE. FRANK T. CAMPBELL. SPENCER SMITH.
<i>Kentucky</i>	W. B. FLEMING. JOHN F. HAGER.
<i>Louisiana</i>	LUCIEN N. BRUNSWIG, <i>Accredited Representative.</i>
<i>Maine</i>	DAVID N. MORTLAND. ROSCOE L. BOWERS.
<i>Massachusetts</i>	GEORGE G. CROCKER. EVERETT A. STEVENS.
<i>Michigan</i>	CHARLES R. WHITMAN.
<i>Minnesota</i>	JOHN P. WILLIAMS. WILLIAM M. LIGGETT. A. K. TEISBERG, <i>Secretary.</i>
<i>Nebraska</i>	THOMAS H. BENTON, J. C. ALLEN, <i>Members of State Board of Transportation.</i>
<i>New York</i>	WILLIAM E. ROGERS. MICHAEL RICKARD.
<i>North Dakota</i>	GEORGE H. WALSH. ANDREW SLOTTEN. R. W. STEVENS, <i>Assistant Secretary.</i>
<i>Ohio</i>	GEORGE E. SMITH, <i>Chief Clerk.</i>
<i>Pennsylvania</i>	THOMAS J. STEWART, <i>Secretary of Internal Affairs.</i> ISAAC B. BROWN, <i>Deputy Secretary of Internal Affairs.</i>
<i>Rhode Island</i>	EDWARD L. FREEMAN.
<i>South Carolina</i>	D. P. DUNCAN. EUGENE P. JERVEY.
<i>South Dakota</i>	JOHN H. KING.

Vermont ----- LEON G. BAGLEY.
 AMORY DAVISON.
 ALFRED E. WATSON, *Clerk.*

Virginia ----- JAMES C. HILL.

Wisconsin ----- THOMAS THOMPSON.

ASSOCIATION OF AMERICAN RAILWAY ACCOUNTING
 OFFICERS.

M. RIEBENACK,
 CUSHMAN QUARRIER,
 D. A. WATERMAN,
 C. I. STURGIS,
 S. M. WILLIAMS,
 C. P. LELAND,
 RICHMOND ANDERSON,

Representing the Executive Committee.

The CHAIRMAN: You will need officers for your meeting. At the last Convention a Chairman and a Vice-Chairman and a Secretary were chosen. It would seem to me that it might also be well to have an Assistant Secretary. The Secretary's office is a very laborious one.

This would seem to be the proper time for the election of these officers.

Mr. WHEELER: I move that the Chairman of the Interstate Commerce Commission, Hon. Thomas M. Cooley, act as Chairman of this Convention.

Mr. KING: I second the motion.

The question was put by Mr. Wheeler and the motion was unanimously agreed to. (Applause.)

The CHAIRMAN: Will you now choose a Vice-Chairman?

Mr. WILLIAMS: I nominate for Vice-Chairman Mr. George G. Crocker, of Massachusetts.

The motion was unanimously agreed to.

Mr. WOODRUFF: I nominate Mr. Edward A. Moseley, if he will kindly serve, as Secretary.

The motion was unanimously agreed to.

Mr. KING: I nominate Mr. Martin S. Decker as Assistant Secretary.

The motion was unanimously agreed to.

ADDRESS OF CHAIRMAN COOLEY.

The CHAIRMAN: GENTLEMEN OF THE CONVENTION:

Our purpose in coming together on this occasion is for consultation upon subjects of mutual interest, and for the discussion of questions which either pertain directly to the official duties we have severally taken upon ourselves, or which at least have some bearing upon the proper performance of those duties. We are not all clothed with the same powers; there has not been prescribed for all of us the like obligations; but in our official action we all have the same general purpose in contemplation, and it may justly be assumed that the views we may severally hold will be of common interest, and that in so far as there has been experience in dealing with practical questions, this experience will be not interesting merely but of high value.

It has been assumed by the people in creating the offices which are represented in this meeting, that there are mischiefs, of some considerable magnitude in the railroad service of the country; and the existence of these mischiefs is the justification for creating such offices. No class of persons in the country will admit more freely the existence of serious evils than those who are managers of the railroads or who are interested as stockholders or bondholders in the results of the management; but as this class look upon the existing evils from the standpoint of corporate interest, they are likely to see them as they exist mostly in the relations

between the roads themselves, while the public, regarding them from a different standpoint, naturally see most distinctly the mischiefs which spring from the relations of the railroads to their customers or which affect the political society.

When the legislation which was intended to bring the transportation business of the country under public control was first entered upon, there were persons interested as managers or otherwise in railroad property, and possibly some others, who denied that any such legislation was fairly warranted by just principles of constitutional law. This denial is not often heard now, but it is very generally conceded that inasmuch as the railway is a public agency, its management is a public trust; and that as such it is as legitimately to be regulated by law as is the management of any other trust in which the public are directly concerned. There are doubtless still some persons, however, who believe that in point of policy, public regulation was uncalled for at the time it was entered upon, and that the results will not justify the expectations upon which the legislation hitherto adopted has been based. This last proposition, I do not see that this convention need care to controvert. It is likely to be the case with all attempts at important reforms in public affairs, that the results will not equal the antecedent expectations; and one of the consequences must be, that those who are officially connected with the effort will be compelled to share among them, to some extent, the blame that inevitably follows the impossibility of giving complete satisfaction to extravagant hopes.

Whether the views of those who have not favored public regulation of railways are or are not justified by the situation, or by the prospects for the future, it seems to be taken for granted now that statutes for the purpose are likely to have a place among the laws for an indefinite period; though to what extent they shall go in regulation, and how far they may justly and properly subordinate the interests

of stockholders and bondholders to the rights and convenience of the general public, are questions upon which the differences of opinion are not likely to be reconciled, and may be expected to be hereafter, as they are now, somewhat radical. There are many who believe that the Government should not regulate merely, but should manage the roads; that its hand should be felt continuously and everywhere; while others look upon the existing legislation as having gone quite as far as can be justified by the expectation of useful results. Others, holding views differing from both these classes, might be mentioned, but it is not important: the future alone, after much more practical experience than the country has had as yet, will determine which of them, if indeed any, are right in their anticipations and prophecies. For our present purpose it is sufficient for us to say, that it is agreed on all hands by those who undertake to deal with the subject of railway regulation, that there are many evils here which ought to be remedied; and whoever speaks of these evils is likely in general terms to talk of a "railroad problem" to be solved: those interested in the roads for the reason already mentioned appearing to look for it mainly in the relations between the roads themselves, while others regard it as existing somewhere in the defective performance by the roads of their public duties, and therefore, perhaps to be solved through the exercise of such governmental power as shall compel proper performance.

It is a noticeable fact that when this railroad problem is spoken of, the mention is likely to be vague and indefinite, whether it is receiving attention at the hands of those representing the roads or from those who speak in the interests of political economy, or as representing the public authorities. If a legal discussion is being had, however narrow may be the point involved, the parties are not unlikely to make use of this phrase "railroad problem," as if a decision upon the matter then in controversy was to solve the problem, or at least was to dispose of some portion or lead up to

some final solution. This same phrase may be used in the very next controversy, though equally narrow, but quite different, and the same expectation of the result may seem to be in the minds of those who represent the contestants. When, however, public authorities are making use of a phrase which pertains to their official duties, and which to the mind of the hearer may seem to indicate their understanding of what their jurisdiction is, in part or in whole, it is important that they employ the phrase with some degree of exactitude; and perhaps no better use can be made of the opening hour of our meeting than to devote it to an endeavor to ascertain precisely what it is that is meant by the "railroad problem," not merely when it is used by ourselves, but also when it is used by those who are connected directly with railroad management. In doing this, however, we shall be under the necessity of going beyond the terms employed in the several acts of legislation under which we are acting, for in none of them is this phrase defined: the laws point out the scope of our duties, and it is easy to see that many of these are of minor importance and stand by themselves, so that they cannot be considered with reason as constituting a part of any great problem; while the evils at which others are aimed may possibly be traced to a common source, and the correction of one through the proper treatment of that common source, may be a correction of the others also. Certainly nothing can fairly be dignified with the appellation of "railroad problem" which does not concern the foundation cause or causes of the principal evils which in the railroad service beget injury or annoyance and excite complaint.

In an attempt to ascertain what the railroad problem (treating the designation in the sense indicated) must be held to be, it may be well at first to point out what it is not; and this I shall now proceed to do.

It is certainly not to be found in the legislation authorizing the building of railroads, or in that which prescribes the

terms and conditions under which the building shall be carried on and completed. It is unfortunate no doubt that the laws for this purpose are so wanting in homogeneity, and in provisions for the protection against the mischiefs with which the exercise of such important powers, when they may be assumed by any one at discretion, are likely to be attended. The authority comes in the main from the legislation of the states and territories; and if we examine these we shall find that apparently the most important object in the minds of the law-makers in granting charters of incorporation for railroads, or in passing general laws which shall stand in the place of such charters, has been to invite and secure the construction;—to invite capitalists, or others who can secure capital by whatever means for the purpose, to expend it to that end; and that with this object in view they have been far more anxious to make their legislation satisfactory to the promoters of roads than they have been to take care to satisfy themselves that the building of a particular road is important on public grounds, or that the road when constructed will, in the service it will perform, meet a public demand. In every section of the country, instances may be pointed out of roads which have been built without any legitimate demand for them whatever, so that the money invested in them has for the most part been as completely wasted as if it had been sunk in the sea. Either there has been no sufficient traffic that at fair rates would support them when built and keep them in suitable condition, or the traffic of the region which must support them was already so far provided for that a new road could only come in as a disturbing factor, to render those already in existence unprofitable, or to force itself upon them as a marketable commodity under circumstances which could be considered as little less than the levying of black-mail. There is reason for saying that when the interest of the whole country is considered, it would be better if the necessity or propriety of every proposed new road were required to be passed upon by competent public author-

ity before the state should delegate to any one the eminent domain to be employed for its construction ; but this is not now required, and under existing laws, a new railway project is in very many cases little more than a mere demand by mercenary speculators upon the credulity of the public, who, understanding very little about the elements that must constitute railroad prosperity, are ready enough to believe that riches are to be found in any plausible scheme that projectors put before them. In some instances, we feel warranted in saying that the building of a road is entered upon with a full understanding, by those who plan and manage the construction, that the road itself, when complete, can have no value to stockholders except as a means of forcing the owners of roads already in existence and performing valuable service to the country, to pay for that which has no intrinsic value, a price measured by its power to do mischief.

There is an evil here which is of no small magnitude ; it may be measured in part by the millions which credulous people, often people of very small means, have invested in worthless roads, but in part also by other millions which have been paid for roads which even those who built them knew were not called for. Nevertheless, the great mass of the people of the country are only indirectly injured by the construction of such roads. The roads do not go out of existence even though it be fully demonstrated they ought never to have been built : every one of them has local communities more or less numerous for which it performs convenient service : they come into business relations with the other roads of the country ; their operations are likely to be conducted in the same methods as those of other roads ; and the great railway questions which concern and disturb the public, as well as those which trouble the railroad world, are likely to remain the same and to require the same discussion and demand the same final settlement as would have been essential if these needless roads had never been constructed.

The "railroad problem" is also not to be found in the condition in which the roads may be put by their projectors or managers, or the manner in which they are equipped for the purposes of operation. A road in bad condition is likely, for that reason, to cause great annoyance to the general public and to its customers. It may result in great delays and possibly in the loss of life as well as of property: a road badly equipped may also, for that cause, be of little or no service to the community; it may possibly be even detrimental, as standing in the way of something better. But commonly the difficulties which are found to arise from these deficiencies in construction or equipment are of a minor character and do not to any great extent affect the general public. They certainly do not rise to the dignity of being considered the "railroad problem" of the age. Neither are they likely to any very great extent to affect the relations of the roads with each other; and we must therefore assume that the problem which we are endeavoring to indicate and define would exist in nearly the same force as now, were these deficiencies entirely cured: if, in other words, every road was in perfect condition and was fully equipped for any business likely to be offered to it. In point of fact, if we examine the roads of the country, we are not unlikely to be led to the conclusion that the equipment of roads may also go beyond any just demand that business makes upon it, as well as fall short of the proper business necessity. This is especially the case with the preparation made for passenger service, since the earnest and somewhat bitter competition that has existed between the leading lines of the country has begotten an extravagance in equipment which presents us the spectacle of palaces moving on wheels across the continent and inviting the traveling public, when upon journeys which but a few years ago could only be made under circumstances of great hardship and privation, to a participation now in comforts and even luxuries which in the case of most of them are quite beyond their ordinary

life at home. But this causes no complaint: the railroad company voluntarily supplies the luxuries and the traveling public voluntarily pay for and enjoy them.

If the freight traffic is not provided for bountifully and extravagantly, it is but just to say for the roads that deficiencies are not often serious, and when they are met with are usually found to exist in the case of roads which have come into existence under circumstances of doubtful expediency, and which since their construction have been unable to command the business that would secure and keep up their adequate equipment. But any amount of imperfection in these particulars will at most only touch upon outlying questions affecting slightly the railroad problem and not the main problem itself.

The relations between the railroad corporations and their employés do not present the "railroad problem" that is troubling the country. We may say this with great confidence because neither the corporations themselves nor their employés seem to take a different view, and because also most of the laws which undertake to provide for the regulation of railways do not confer upon the authorities which they create for the purpose any jurisdiction over these relations. It is no doubt true that the public authorities might with entire propriety take them somewhat under consideration, since it not infrequently happens that the just performance of their own duties is impeded, or to some extent at least disturbed by the disputes which arise in railroad service, and by the controversies which sometimes injuriously affect public transportation in considerable sections of the country. It might not only be admissible but important, and even a matter of duty, that in some cases railroad commissions should recommend legislation bearing upon these relations; legislation, for example, in regard to the use of machinery better calculated to protect employés against injury or loss of life; and legislation that would tend to lessen the injurious consequences of disturbances that arise

over the question of wages, or of the unjust discharge of faithful servants. Possibly also it might be, if not strictly within their province, certainly not foreign to their duties, to recommend to the railroads of the country and to the employés the adoption of some system of insurance, under which either the railroad companies or the employés themselves, by some general rule of voluntary adoption, should provide a fund for the protection of families against the evils of poverty and destitution, especially in cases of accident resulting in death or in inability to perform labor. But whatever may be done on this subject, the fact would remain that after all that was possible had been considered and provided for by the parties to this service in regard thereto, the great railroad problem would still remain unsolved, and still demanding the best attention of railroad managers and of the public authorities. The relation of employer and employé touches it but lightly; and even on occasions when strikes affect the business of large sections of the country, so as to seem for the time being to make the relation between the strikers and their employers more important than anything else in those sections, yet they are seldom of such magnitude that the business of the country at large is seriously disturbed, and they are seldom of long continuance; so that if they constituted the only difficulties in railway service, the mischiefs which are felt on all hands would be far less serious than now; and it can scarcely be doubted that they would find speedy and satisfactory solution.

The "railroad problem" is not to be found, exclusively at least, in the diversities which exist between the legislation of the several states when compared with each other, or between the same legislation when compared with that of the Federal Government. These diversities necessarily aggravate the existing difficulties and constitute obstacles in the way of the speedy and effectual removal of some of the worst in which the general public is concerned; but the

difficulties existing in the relations between the roads themselves are affected but slightly by differences in legislation. Remove these, and the clashing of interests between the roads will be the same as now: the temptation to unfriendly action for the very purpose of inflicting injury upon rivals or of embarrassing their operations with a view to forcing what cannot be accomplished by negotiation, will be as strong as ever. I need not enlarge upon this for it is obvious; and so long as the fact is as stated the railroad problem must remain, whatever may be the laws that state or territory or nation may have passed and enforced in mitigation of the evils.

The "railroad problem" is not to be found altogether in the fact that railroad rates are supposed by the public to be in a great many cases much too high; or that there is unlawful discrimination in the transportation of freights and of passengers, and that many persons are carried free who are not entitled to it by law; or that in the cases in which exceptions are made by law to the general rules which are prescribed, the railroad corporations contrive to increase these exceptions in inadmissible or unwise ways to the detriment of their own revenues, or to the increase of the charges that are made against the community in general. The problem without question is present here, but not in its entirety. There is no reasonable doubt that railroad charges are often made higher than they should be. This is sometimes made clear on an investigation into the facts, where those who make them are given the amplest opportunity to justify their rates if they can do so. And it may not unjustly be said that they themselves in many cases furnish evidence of more or less conclusive nature that the public complaints are not without foundation: they do so when they cut rates in the warfare with each other to an extent that greatly reduces their annual income and still leaves them in a condition to make respectable dividends to stockholders. They also furnish evidence

tending in the same direction when they carry great numbers of persons free of charge; a number which we hope is diminishing from year to year, but which nevertheless, when the whole country is considered, is still enormous; embracing as it does among the private citizens who are thus favored, not the men of small means to whom the charge of transportation would be a serious burden and must therefore very much restrict their means of indulgence, but the men of large means who, because they are such, have no claim whatever to the favor; embracing also officials of all grades, and especially such as are empowered to make state and municipal laws or regulations bearing upon the subject of railway management. The discredit into which the use of the ordinary evidence of a right to free transportation has fallen is so great, that both the corporations and the persons who receive it deem it politic to resort to other devices, the most frequent perhaps being the giving of mileage books; so that a state legislator or city mayor or other officer, when he uses it, may appear to be paying his passage though in fact he is receiving it free. I need hardly say that the giving of the transaction this form does not in any degree relieve it of the discredit which fairly attaches to it, or lessen in the least its moral turpitude: on the contrary, it adds to the main offence of obtaining transportation at the cost of the public, the cowardice of going through the forms of payment, that by this false pretence the offender may cheat his fellow-passengers into the belief that he is doing what a proper regard for the rights of others would require him to do. In some sections of the country the practice here referred to has continued for such a length of time that it seems to be expected by the general public that, as a matter of course, it will be continued indefinitely, and it is therefore believed to be practiced by every successive incumbent of certain offices. Whoever would investigate the sources of political corruption in such sections would do well to inquire to what extent they had their origin in public opinion

being debauched by these corrupt practices until at length the grosser forms of political misconduct came to be looked upon as matters of course, and tolerated or excused for that reason.

The manner in which advantage is taken of the exceptions of the statute in order to avoid charging the regular rates also has a tendency in the direction of showing that the regular rates are higher than they should be. Thus the statute in forbidding discriminations in passenger carriage makes exceptions for the case of excursions; and how diligent some roads are in finding excuses for excursions in which they are to carry the passengers for a mere fraction of the customary rates is well known to us all. The excuse advanced may be that thereby they create business which would not otherwise come to them; that they gain favor by giving special accommodation to communities or societies at particular times and on special occasions, and so on; but we have a right to assume that they nevertheless expect to make and do, as a general fact, make some profit on every such occasion, except when calamities befall them through the accidents which are much more likely to attend special trains, running on unusual time, than the regular trains. A person investigating the subject with a view to reaching the underlying reasons for their action would be very likely to inquire why, instead of manifesting great anxiety to increase the number of occasions for exceptional trains carrying passengers below the regular rates, the company does not make the regular rates as low as can reasonably be afforded, and thereby invite the public to make excursions, not on special occasions merely, but continuously; thus increasing the aggregate passenger traffic though taking it by the ordinary and safe trains, as the railroads of some foreign countries have done without loss by a similar reduction of rates. The reason for making this inquiry would seem to be specially forcible when it is borne in mind that the exceptional trains that are run at reduced rates furnish to a very considerable

extent the opportunities which the class of people known as scalpers embrace to make great profits out of the railroad companies, and, through them, out of the general public who, in their regular travels, must pay rates which are maintained above what would otherwise be necessary, that those who charge them may not be the losers through the operations of this class of persons.

But if the railroad companies were chargeable with no breach of law or of sound morality, or with want of good policy in the carriage of passengers free, or of either passengers or freight at unjustly discriminating rates, and if they made use of their privileges under the exceptional provisions of the statutes wisely and justly, there would still be the same railroad problem that exists now—not, it is true, accompanied by as many evils as now, but nevertheless demanding solution as it now demands it, only somewhat less importunately.

Many other things in railroad service are causes of annoyance to the public, or tend to break up friendly and useful relations as between the roads themselves, but they may be passed over lightly at this time because they touch but lightly upon the great problem that confronts the public and makes such serious demand upon the best thought of the country. Thus the refusal of one road to unite with another in making convenient arrangements for the transfer of freight or passengers from one line to the other without unnecessary delay; or the making of arrangements with one company which are unjustly discriminating as against another, are seen in some cases to be evils of no slight magnitude; but such cases are not numerous; they are believed to be diminishing in number from year to year; and for the most part they can be dealt with by the public authorities on a consideration of all the facts with no great difficulty.

The troubles that are always present, always annoying, and always difficult of adjustment, are those which relate to the making of rate sheets, and to the manner in which these are

observed or treated after they are made. It is here that we discover a problem that is not narrow or temporary, and that does not touch lightly upon the relations between the railroads themselves, but is seen in nearly all their controversies and misunderstandings, and that is the prolific parent of nearly all the difficulties between the railroads and those who have occasion for their services. It is the unjust nature of the rate sheets when the rights of the public or of other roads are considered; it is the refusal to join with other roads in making them, or the demand of an unreasonable share of a joint rate when one is made; it is the sudden reduction in rates when injury can be done to a rival by resorting to that measure, or when it is hoped that the rival can be compelled thereby to give assent to some measure to which assent cannot be obtained by negotiation; it is the refusal to unite in through bills of lading at agreed rates, or to receive for the transportation of persons the tickets that have been given by other roads; it is the failure to abide by understandings concerning rates when a disregard of them seems to promise a temporary advantage; in short, it is the manner in which this whole subject of making rates is dealt with and treated by the railroad companies, and the effect thereby upon their own interests respectively, the interests of stock and bond holders, and the interests of those who, willingly or unwillingly, are their customers, that present the fundamental and still unsolved problem which must necessarily address itself, first of all to the railroad managers of the country, and after that to the public authorities. The evils in railroad service nearly all find their origin here; and especially is this true of those that are most difficult and inveterate. The railroad problem will be dealt with effectually when the power to fix the rates for railroad transportation is placed upon such a basis that the evils now so prominent and troublesome and persistent, which spring from its exercise, shall be cured and the power itself brought under effectual regulation.

When the number of railroads which are now merely subsidiary to other and stronger lines, either through being brought into the same interest or from being leased or otherwise effectually controlled, are left out of account, there are something like five hundred in this country still remaining, whose boards have the power to make rates for the carriage of passengers and property. These boards are by the law left to exercise in the first instance what is practically a free and unlimited authority in the making of rate sheets. They may make them low or high, just or unreasonably discriminating as between persons and property, or different classes of property, or between different centers of trade, at pleasure: the few instances in which the laws have undertaken to prescribe a precise limit being in the main confined to passenger transportation. The several boards are not obliged to agree with each other as to what the rates shall be: it may be their policy to come to agreement, and it may be assumed that they will recognize this fact and endeavor to come to some understanding in advance; but this is not compulsory; and it not unfrequently happens that a single road will proceed to make rates wholly irrespective of what has been done or proposed by other roads with which it must come into competition or relations of some sort in respect to business. It was at first thought by those who made the laws for the building and management of roads, that to leave the authority thus unrestricted was the best possible condition of things: that it would lead to active competition in rates, of which the general public would have the benefit: that the competition would as a matter of course force the rates down to a reasonable point: in short, that the competition would act precisely as it does in other lines of business. Experience has shown that this idea of railroad competition is a mistaken one: that it cannot be compared with competition in the channels of commerce in general: that there are no such tests of the value of railroad service as can fix the limit down to which a road

may go without inevitable loss upon its business as an aggregate: that it may carry some classes of its business at impolitic if not in fact at losing rates and yet make profits upon its whole operations by charging to other classes of its business rates which may perhaps seem to be excessive and yet cannot clearly be shown to be so because of the absolute impossibility of making distinct apportionment between the cost of the service rendered to one class and that rendered to the other. Indeed, it is now very well known that in many cases where roads are carrying freights at what seem to be no more than reasonable rates, on lines leading directly from one great business center to another, other roads whose lines are of twice the distance in length, may be carrying the like freights at the same or at even less rates, though the expense to them is presumably twice as great. This they do because they are forced to do so by a situation which they find absolutely controlling. The general fact is that in severe competition between business centers, the very long route carries, not at the same rate merely, but at a lower rate because otherwise it would not get the business to carry. How distinctly is it seen here that it is utterly impossible to judge of railroad competition and its effects, its usefulness and its mischiefs, by comparing it with competition as we encounter it in other lines of business.

We have said that every one of these five hundred operating roads, through its managing officers, may make rate sheets at pleasure. The rates are subject to be changed to some extent afterwards when they are found to be violative of public rights or interests, but the public authorities are not consulted and their consent is not asked as a prerequisite to putting the rate sheets in force. If a rate sheet affected only the road itself and its customers, the fact stated would in a great many cases be of local importance only, and other roads not directly competing with the road making it need not concern themselves specially with its being put in force. But so inextricably are the railroads of the country inter-

mingled in interest; in so many ways do they form routes from business center to business center; from the lakes to the gulf and from ocean to ocean; so easy is it for almost any seemingly unimportant road to be made a part of some direct or indirect route which shall constitute a great channel of commerce, that any considerable change in the rate sheets by any one of these five hundred boards is not only likely to affect the business and the rate sheets of the roads which are its immediate rivals, but to reach out also in its influence from road to road in all directions; not over small neighborhoods, but from state to state, until what seemed to be the action, and was perhaps the hasty and reckless action, of a mere local board may become almost of continental importance. An ill-advised act possibly resulting from passion or from a belief that a power to do mischief when thus exercised will compel others to do what they would not otherwise consent to, by way of purchasing peace, may thus carry disorder into the railroad system of a large section of the country if not into the whole of it, and may compel a change in the rate sheets of all the roads which form the lines competing with those of which the road whose rate sheet causes the disorder is or can be made to become a constituent part.

Now it need hardly be said in this convention that one of the most important things to be accomplished in the regulation of railroads is to secure steadiness of rates; I do not mean that sort of steadiness that would prevent the gradual reduction of railroad charges as it should be seen to be practicable and just for the railroads to make it; but I mean the sort of steadiness that makes changes only in the proper direction, and when it does make them, does so deliberately, carefully, after consideration of all the interests involved, and after such reasonable notice to the public as well as to the railroad interests, as will enable due provision to be made by others to prevent needless loss and injury therefrom. All sudden changes are necessarily to some extent injurious:

they are injurious even though they are made in the direction of lower rates and when as a matter of right they ought to be made in that direction: for they force sudden changes also in the values of property; they affect in unexpected ways contracts made in the commercial world; and they give abundant opportunities for fraudulent understanding as between railroad officials and large dealers: opportunities which the public are certain to suspect are not unfrequently availed of. The law does well when it requires that a notice reasonable in point of time shall be given not merely of advances in rates but of reductions also. This is right and proper even when the reductions result from competition properly so called in railroad service; but the sudden cutting of rates is usually an act which can by no proper use of terms be called a result of legitimate competition. Almost invariably it is an act of open and avowed warfare, entered upon not to benefit the public, but to injure a rival line. It differs from the warfare between nations in this, that in the case of international war the effects can commonly be limited for the most part to those who engage in it, while the rate war on the other hand injures not merely the parties engaged but possibly to an equal extent other railroads whose operations reach the same sections, while injuring also far more than it benefits the business community that seeks to take advantage of it.

This, then, is the "railroad problem:" there are mischiefs in railroad service that are outside of it, but we distinctly indicate the main source of difficulty when we place our finger upon the power as it exists now, to make and unmake the rates for passenger and freight transportation. So long as five hundred bodies of men in the country are at liberty to make rate sheets at pleasure, and to unmake or cut and recut them in every direction at their own unlimited discretion, or want of discretion, and with little restraint on the part of the law except as it imposes a few days' delay in putting changes in force, the problem will remain to

trouble us; the mere existence of the power making losses, disorder, and confusion constantly imminent. The authority to reduce rates when they are found to be excessive is but a slight corrective, and reaches the evils only on the public side; and I need hardly remind you who understand it so well, that in this matter of rates, the power on the part of the public authorities to compel the railroads to do what is just to each other in respect to observing rates which they have once made, and to adhering to rate sheets until there is reasonable ground for changing them, is so very slight that it may really be regarded as too insignificant to be spoken of as possessing substantial value.

A problem so momentous as that described, the members of this convention may very well decline to discuss in its totality, or even at all, except as by law they may have been given authority to deal with minor questions embraced within it; but this need not hinder a recognition of its difficulties nor of the infinite powers of mischief which are involved. The first effective step towards the removal of any great public evil is to have distinctly pointed out its scope and its proportions, that those who undertake a reform may not be misled into accepting some single feature as constituting the whole, or some minor consequence as embracing the aggregate of all the mischiefs which do or may result from it.

In the preparation of this paper, the purpose to limit it strictly to indicating what the railroad problem is, has been closely adhered to, and no attempt whatever has been made to indicate what should be the solution.

Gentlemen, you have heretofore at these conventions had a Committee on Order of Business. May it not be well to appoint such a committee now?

Mr. WOODRUFF: I move that such a committee be appointed by the Chairman, as usual.

The motion was agreed to.

The CHAIRMAN: The Chair will appoint as the Committee on Order of Business—

GEORGE M. WOODRUFF, of Connecticut.

SPENCER SMITH, of Iowa.

WILLIAM HIMES, of Florida.

WILLIAM E. ROGERS, of New York.

DAVID N. MORTLAND, of Maine.

At this point a recess was taken for the purpose of allowing the Committee on Order of Business to meet and report.

At the expiration of the recess the Convention reassembled.

REPORT OF COMMITTEE ON ORDER OF BUSINESS.

Mr. WOODRUFF: Mr. Chairman, the gentlemen of the Committee on Order of Business desire to make this general report:

That the first order of business shall be the report of committees named and appointed at the last meeting to report to this Convention, and that they shall report in the order in which they stand in the record of the last meeting, to-wit, that the first report shall be by the Committee on Railway Legislation, the next report by the Committee on Reasonable Rates, and third, the Committee on Uniformity of Railway Accounts; that we then take up the other three subjects named in the call for this meeting and in the order named, to-wit, the third, fourth, and fifth. Following that we shall request that the article prepared by Judge Schoonmaker upon discrimination in the use of private cars be presented by himself; and we would ask, if any other gentleman desires to submit for the consideration of this Convention any subject, that he hand it in to the committee, who will arrange in regard to the hearing hereafter.

The CHAIRMAN: Gentlemen, you have heard the report of the committee. What action shall we take upon it?

Mr. HAGER: I move its adoption.

The CHAIRMAN: The motion is made that the report be adopted. This, I understand, is not a final report. We may expect further report from the committee. The question is on the adoption of the report as far as made.

The motion was agreed to.

The CHAIRMAN: The first business, then, before the Convention will be the report from the Committee on Railway Legislation.

REPORT OF COMMITTEE ON RAILWAY LEGISLATION.

Mr. CROCKER: Mr. Chairman, the Committee on Railway Legislation desires at the present time to report progress. The Convention is aware that the committee at the last session made a report embodying various recommendations, the aim of which was to bring the laws of the several states into more exact harmony with the provisions of the Interstate Commerce Act. These recommendations were adopted, but the subject of the diversity of the laws of the different states as between themselves was referred back to the committee for further report. To those members of your committee who are present at this Convention it has seemed inexpedient to attempt to make a report *in extenso* upon that subject at the present time, nor in fact until they could learn with some definiteness in regard to the obstacles which had been encountered and the success which may be achieved in carrying out the recommendations adopted last year looking to uniformity between the laws of the several states and the Interstate Commerce Act upon the several subjects therein enumerated. After this first step has been taken, a

report in regard to bringing the laws of the several states in other respects into greater harmony can more intelligently be made. The committee therefore reports progress, and asks leave to sit again.

Mr. ROGERS: I would like to ask the chairman of the Committee on Railway Legislation what were the subjects with which they dealt. I mean, Was the subject of physical appliances and the uniformity of laws dealt with or considered, or was your attention more particularly directed to matters governing rates? The reason I ask the question is that it will depend somewhat on the answer what motion I may desire to present to this Convention.

Mr. CROCKER: As indicated in the report made last year, which, I think, will very fully answer the question the gentleman has propounded, the committee did not consider that it was limited to any special class of laws, but that it was to consider all those matters of legislation upon which uniformity and harmony might be secured, whether relating to safety appliances or any other subject of railway legislation.

Mr. ROGERS: I regret to state that I am not familiar with the report of the committee or the work of the committee up to date, so I ask in that respect for information; but it occurred to me that the time had come when this Convention could with great propriety express its views and convictions as to the advisability of the Federal Government, either through the Interstate Commerce Commission or in some other way, taking action upon this matter of safety appliances, such as the automatic coupler, the common coupler for air-brakes and for steam-brakes, and certain other matters, such as a rail on the side of the car with the view of diminishing the number of men killed by falling from the cars in bad weather or through any other cause. As is well

known to anybody who has been engaged in railroad matters, the question of the coupler gets in a more and more chaotic state every year, instead of settling itself, and the conclusion has been pretty well reached that unless the Government takes control of this matter, and selects a coupler and compels the affixing of it to cars engaged in interstate commerce, it will become still more chaotic. This matter was considered of so much importance that the President in his message to Congress took occasion to call attention to it, and the figures he presented were startling. We are all more or less familiar with them. I should like to hear an expression of views as to the propriety of a resolution being passed recommending federal legislation upon the subjects I have mentioned.

Mr. CROCKER: As those members of this Convention who were present at the last Convention are well aware, that subject was very fully discussed last year, the Committee on Railway Legislation having offered resolutions relating thereto. These resolutions, in the form in which they were adopted, are as follows:

Resolved, That it is expedient that the laws of the several states should be in exact harmony with the provisions of the Interstate Commerce Act on the following topics: The definition and prohibition of unjust discrimination; the prohibition of undue and unreasonable preferences and advantages; the requirement of equal facilities for the interchange of traffic; the regulation of the relations between rates of compensation to be allowed for long and short hauls; the regulations as to the printing and posting rates, fares, and charges; the regulations as to notice to be given of advances and reductions in rates; the penalties for false billing, false classification, false weighing, etc.

Resolved, That the respective states should require, either directly by law, or indirectly through the instrumentality of their railroad commissions, each railroad corporation subject to their jurisdictions to place driving-wheel brakes and apparatus for train brakes on every locomotive con-

structed or purchased by it, and train brakes upon every freight car hereafter constructed or purchased by it, and also upon such cars and upon every freight car owned by it the coupler or drawbar of which is repaired by it, an automatic coupler of the Master Car Builders' type, at each end of the car.

Resolved, That Congress, either directly by law, or indirectly through the instrumentality of the Interstate Commerce Commission, should take similar action.

That was the form which the resolutions took at the last Convention, after a very extended discussion. I regret that Congress has not seen fit thus far to take such action or carry out the suggestions made.

The CHAIRMAN: Is there anything further on this subject?

Mr. ROGERS: I desire simply to call attention to the apparent futility of accomplishing the result that is desired, namely, the attainment of uniformity in these matters, through the recommendations of the state commissions. The difficulty is that there are innumerable couplers, both what is known as the automatic coupler to hold the cars together, and also a great variety of the steam-pipe coupler and of the air-brake coupler. A recommendation, therefore, from the different state commissions to the legislatures, even if it were conformed to by the legislatures of the different states, would prove practically futile. It seems to me the only solution of this problem is for the Interstate Commerce Commission to recommend such legislation energetically, or to have it introduced in some way by some member of Congress who would see that the bill was actually put through. I have no further faith in this matter unless such a course is adopted. Any attempt to regulate these questions through the state commissions would result, instead of harmony, only in greater diversity and confusion. This resolution of the last Convention provides that the respective states should require,

either directly by law, or indirectly through the instrumentality of their railroad commissions, and so on; and then that Congress, either directly by law, or indirectly through the instrumentality of the Interstate Commerce Commission, should take similar action. May I ask, has any action been taken through the instrumentality of the Interstate Commerce Commission, or has any recommendation been made by the Interstate Commerce Commission looking to this result?

The CHAIRMAN: That action has been placed before the committee in Congress having charge of the general subject.

Mr. ROGERS: In the form of a recommendation?

The CHAIRMAN: Yes, sir; the recommendation, as embodied in these resolutions, was supported by the recommendation of the Commission.

Mr. ROGERS: Then I judge from what you say there is really nothing further to be done, so far as the Interstate Commerce Commission is concerned, in securing this result? It is suggested to let this matter go over for the purpose of taking up some other matter. I am perfectly willing to do so if I may know when an opportune time will come to present it.

The CHAIRMAN: There will be no difficulty in finding an opportune time for its presentation, and you had better consider the matter and decide upon the proper action to be taken. I do not consider that this subject is necessarily covered by the action of the committee of which Mr. Crocker is chairman. That was a committee appointed for the purpose of securing uniformity in railroad legislation. The subject under discussion might perhaps be regarded as new legislation, and be considered separately from the action of that committee. It might even be referred to a new committee if it was thought proper.

Mr. ROGERS: I will waive discussion now and perhaps bring the matter up again in the form of a resolution.

Mr. WOODRUFF: With the permission of the Convention I would state that the Committee on Order of Business has learned that it will be necessary for Judge Schoonmaker to leave town before we could reach the subject upon which he has prepared a paper, and we request therefore that he be kind enough to present his paper at this time.

The CHAIRMAN: If there is no objection to that, Judge Schoonmaker is invited to present his paper now.

Judge SCHOONMAKER: Mr. Chairman and gentlemen of the Convention, I have prepared a brief paper on the subject of discriminations in the use of private cars by shippers. The paper is intended to be little more than suggestive. It goes into no extended details; there is no definite suggestion made as to future action; but the purpose in view is to call attention to the subject and to indicate to some extent its importance, in the expectation that the Convention perhaps, if it should deem the subject of sufficient importance, would appoint a committee of its own members to consider and report fully upon it at some future meeting of this body. With this brief preliminary statement I will proceed to read the paper:

DISCRIMINATIONS FROM THE USE OF PRIVATE CARS OF SHIPPERS.

One of the features of transportation at the present day demanding serious consideration is the extensive use of private cars owned by shippers. If the use of such cars concerned only carriers themselves it would be a private matter, to be dealt with between the managers of corporations acting as common carriers and the investors in the property, but the discriminations among shippers to which

the practice leads make it a public matter of pronounced importance.

The use by carriers of private cars of shippers instead of their own equipment has developed in the last few years to very large proportions. Many thousands of them are now in use for the transportation of various kinds of traffic. The principal articles for which they are used are such staples as petroleum and cotton-seed oils, turpentine, live stock, and dressed meats. These cars are mostly of improved styles, such as tank cars for oil and turpentine, live-stock cars adapted for feeding and watering stock on the train, and refrigerator cars arranged for the preservation of fresh meats; and they usually cost somewhat more than the cars owned and furnished by carriers themselves. In some instances, however, ordinary box cars similar to those furnished by carriers are supplied by shippers. Details with regard to the varieties and numbers of private cars used, owned, and furnished by shippers, their styles and cost, or even their advantages to the traffic carried in them, are not material to the present purpose, which is only to call attention to the public consequences of their use, in the form of discrimination between shippers who own such cars and those who use the carriers' own equipment.

The right of a railroad company to haul private cars of shippers if it see fit to do so, is not now called in question; but a road is under no obligation to do so. It does so in the exercise of its own volition. The original conception, in the early period of railroads, that a railroad was only a common public highway upon which, as upon a turnpike, any one might place his vehicle and have it drawn by paying the toll, was long since justly discarded and has no existence in national regulation. Traces of it may, however, linger in some state statutes. Railroad companies are chartered for much more than the mere construction of their roadways. They are required and expected to equip and operate their roads, and their equipment must be suitable

and sufficient for the business in which they engage. These are primary public duties, required as conditions of the franchise, and admit of no excuse for non-compliance.

They are intended to be, and are in fact, common carriers, and the relations and office of a common carrier are inconsistent with any meddling on the part of others with its property or its mode of carrying on its business. Subject only to the authority of Government, its exclusive control of its tracks and vehicles of carriage is indispensable to its rights and duties, and this principle accords with sound public policy.

In contemplation of law cars used by a railroad company in its ordinary business, however furnished, whether by itself or by private shippers, are, for transportation purposes, deemed its own, and the rules for the regulation of commerce, as well as the general rules of law respecting the responsibility of the company to the public for care and safety, apply alike whatever vehicles may be used or however acquired. If a railroad were under a compulsion to haul private cars when offered very serious questions might arise as to its responsibility for the safety of cars, or for accidents resulting from ill-adapted cars, defective safety appliances, or the like. The law, therefore, here, as in England where great attention has been given to the subject, leaves railroads free to haul or not to haul private cars in their discretion, but brings the conduct of the company in its transportation business under the obligations and restraints of public regulation, without regard to the kind of cars used or the mode in which they may be procured.

The law for purposes of regulation recognizes only two classes to which its provisions apply. One consists of the carriers, whose function is to serve the public; the other is the whole public, whose right it is to be served; and the fundamental principle applicable to both is equality of service and charges under conditions that are substantially similar. There is no middle ground, nor an intermediate class

to hold a dual relation as shippers and *quasi* partners of carriers, and so gain preferences over other shippers by sharing the earnings of the carriers as part of their profits as shippers. Shippers must stand on the same plane, and one shipper cannot secure to himself, by any pretext or device, a pecuniary advantage in transportation over other shippers. Every preference given by the acts of a carrier is under the ban of the law, and the methods by which it may be done are not material.

These observations lead to the particular point intended to be emphasized—the discriminations resulting from the use of cars of shippers. The method by which this is done is usually as follows :

A firm, or perhaps a combination, dealing in some article of commerce, not satisfied with the ordinary trade profits of its business common to others engaged in like business, desires to augment its profits by some auxiliary means in which its rivals may not be able to compete. It thereupon builds a large number of cars to be used exclusively for the carriage of its own traffic, unless, as is the case in some instances, some traffic can be carried on the return trips of the cars. The cars so built are usually of some improved style not furnished by the carrier itself. A contract is then made with railroad companies to haul these cars without charge therefor to the shipper, but the carrier to pay compensation for their use, in the form of mileage, usually three-quarters of a cent for every mile hauled both loaded and empty, though sometimes more. As the revenue from mileage depends on the number of miles hauled, it is part of these arrangements that the cars shall be hauled at high rates of speed and quick and frequent trips made. Sometimes some additional allowance is made for some terminal matter, such as yardage, actual or constructive, for live stock ; and in all cases there is free storage of cars and terminal switching at the carriers' expense.

Investigations made by the Interstate Commerce Commis-

sion at different times have disclosed to some extent the very large sums received by shippers as mileage for the use of such cars. By an investigation made in 1889 it appeared that on a single line of road between Chicago and an interior eastern point—a distance of 470 miles—refrigerator cars owned by three shipping firms made in nine months, from August 1, 1888, to May 1, 1889, 7,428,406 miles, and earned for mileage \$72,945.97, being about \$8,112 a month, or substantially at the rate of \$100,000 a year.

By another investigation, made in 1890, it appeared that private stock cars to the number of 250 had been used upon a line made up of two connecting roads between Chicago and New York, beginning with 150 cars on September 1, 1888, increased 30 more a month later, 20 more another month later, and reaching the total of 250 in June, 1890; that the cars altogether had cost \$156,500, and had earned for mileage in two years, from September 1, 1888, to September 1, 1890, \$205,582.68; that the entire expense to be deducted during that period for car repairs and salaries for their management was \$34,050.48, leaving net revenue to the amount of \$171,532.20, being an excess of \$15,032 above the whole cost of the cars. The cars were therefore paid for and a margin besides in two years, and thereafter, under the same arrangement and with a corresponding use of the cars, an income of upwards of \$100,000 a year was assured on an investment fully repaid or in effect on no investment whatever.

It is obvious what advantages to a shipper furnishing cars such a revenue from their use affords him over a competitor shipping in cars belonging to the carriers. The latter pays the transportation charges in full. The former is reimbursed for a considerable part of these charges by the mileage received. If both sell in the same market and at the same price the shipper owning the cars makes a profit greatly in excess of the other, or, by reason of his combined business as car-owner and shipper, can undersell his competitor, com-

mand the market, and still make a profit, while the other must carry on his business at a loss or be driven out of the market.

By still other investigations at various times the gross discriminations that have characterized the transportation of petroleum oil in barrels and in tanks, in which payment for the use of tank cars has been a factor, have been developed. Thousands of such cars are owned by shippers and used exclusively for the carriage of their own oil. They are paid by the carriers for the mileage made by the cars, whether loaded or empty. The cars are practically part of the investment in their business, and the revenue received for their use is, to an extent at least, a rebate from the rate, which gives the shippers owning the cars a corresponding advantage in the markets. Details need not be entered into. It is sufficient to say that the injurious consequences have been very generally felt and observed. Dealers who have been obliged to ship in barrels in the box cars furnished by carriers have met with disaster and been largely forced to relinquish the business, while the tank shippers owning their own cars have enormously prospered and rapidly absorbed the business of their less favored competitors, until one great combination has become an overshadowing monopoly, representing fabulous wealth with corresponding power and influence, able to command where other competitors must solicit—and too often solicit in vain—and accorded on the part of carriers an apparently eager subservience.

A full and careful statement showing the aggregate of private cars owned by shippers and of the moneys paid for their use, would exhibit results that would be startling both in their magnitude and character. A single railroad company, as shown by its official report for 1889, paid car mileage to sixty-five different companies and firms owning cars, of which fifty-four were shippers and the remaining eleven fast-freight organizations. The revenues of carriers are seriously impaired by the amount these payments add to

to the expenses of operation, and it is not uncommon when rates are abnormally low that after deduction of these payments not even the cost of carriage is left to the road, so that the traffic thus carried is sometimes detrimental to the carrier. The practice is therefore neither good transportation policy from the carriers' standpoint, nor, in a larger sense, good public policy, which, as its essential feature, requires the absence of every form of favoritism and preference on the part of Government or the public agencies, and equal opportunities for enterprise and energy in the competitions of business, to the end that individual character—the state's chief security—may be developed and merit attain its just reward.

The railroads of the country are themselves responsible for the use of private cars of shippers upon their roads and for the abuses that have resulted from their use. The reluctance and even neglect of the roads to provide suitable and improved cars to meet the growing demands of commerce and carry certain kinds of traffic without injury to its usefulness and market value, at first impelled shippers themselves to do what the carriers should have done—to furnish cars suited to their business. The hauling of the shippers' cars then became a matter of competition among the roads, and they mistakenly adopted the plan of paying to shippers the same or even a greater mileage rate than the roads allow between themselves in the interchanges of cars, where the allowances are reciprocal and for the most part substantially equalize each other. But in the case of shippers' cars there is no reciprocity. The money is paid directly to the shipper, and, to the extent that it exceeds current interest on the cost of the car and a fair allowance for depreciation, it is a direct loss to the carrier and a discrimination in favor of the shipper. Although three-quarters of a cent a mile is the usual mileage rate paid, the allowance is sometimes a cent a mile, or even a cent and a half a mile, and

contracts have been entered into by carriers with shippers to pay such rates for a period of five years.

The point now aimed at is the discrimination to shippers. Under existing methods this has become an evil so general and of such proportions that it can no longer be disregarded, and a remedy is of urgent importance. Any plan involving the payment of mileage to shippers is evidently impracticable. No mileage basis can be fixed that will apply to different kinds of cars and that will effectually guard against discrimination. It doubtless is difficult to devise any plan that will be just and not liable to some abuse. In England, where many private cars are furnished by shippers, especially in the coal trade, a practice prevails of making an allowance to the car-owner for the tonnage carried, but obviously that method has defects and is open to abuse.

If a radical change, forbidding the use of private cars of shippers and requiring carriers to furnish all cars themselves, is impracticable, and if the practice of using cars of shippers and paying for their use is to continue, a feasible plan would seem to be that the payments in no case should exceed what the expense would be to the carrier if it owned the car—that is to say, the current interest on its cost and a just allowance for depreciation, and a right on the part of the carrier to use the cars for other shippers when their owners do not furnish loading—with the provision that all contracts for the use of such cars should be filed with the Interstate Commerce Commission and the reasonableness of the allowances be subject to its jurisdiction.

The CHAIRMAN: We have put aside the regular order of business for the purpose of listening to this very interesting paper prepared by Judge Schoonmaker. The regular order now comes up again, and it is upon the report of the Committee on Railway Legislation.

Mr. HAGER: I desire to offer a resolution to the effect—

That having listened to the able paper of Judge Schoonmaker on the subject of discriminations from the use of private cars, we hereby express our appreciation of its merit and value.

Mr. KING: I move that it be incorporated in the minutes of the meeting.

The CHAIRMAN: That will be done. We will accept the amendment, although it is unnecessary. You have heard the resolution regarding the paper of Judge Schoonmaker?

The motion was unanimously agreed to.

Mr. WOODRUFF: I move that a committee of three be appointed, to whom shall be referred Judge Schoonmaker's paper for report thereon, and on the subject generally, to the next Convention.

The CHAIRMAN: Would it not be well to report all the committees that it is desirable to have appointed, and have them all appointed together?

Mr. WOODRUFF: Then we will reserve that for the present.

REPORT OF COMMITTEE ON RAILWAY LEGISLATION.

The CHAIRMAN: The question now is upon accepting the report of the Committee on Railway Legislation and of giving it leave to sit again. I would say to the gentleman from New York, who has had something to say upon this matter, that this subject has been considered not only by that committee, which has gone into the subject of the railway legislation of the country very carefully, but also to some extent by the Interstate Commerce Commission, and possibly after he has looked into the action heretofore taken he may not care to have any further specific action now, or, if he does,

he can put it in such shape for consideration as he may desire. The acceptance of this report and granting the leave to sit would not stand in its way at all, and if the Convention is ready for a motion to that effect I will now put it.

Mr. KING: I would like to say, with all due courtesy to the gentleman who is chairman of that committee, that I would like to have an understanding—a sort of contract—that at the next meeting he will have a report for us. It is a matter of a good deal of importance. The committee was continued over from last year; and for one I think we ought to have some report on the subject. With that suggestion I am willing to vote for the pending motion. We did not get any report this year, except that the committee was making progress and requested leave to sit again. I am perfectly willing to grant leave to sit again, but it seems to me that more of a report ought to be made next time.

Mr. HIMES: Two years ago, when the resolution providing for this committee was under consideration—I believe it was at that time; I think this committee exists under a resolution passed at that time—I moved that it be called upon to report at that Convention, but no report was made. The Convention believed that no report could be made then, and doubtless it was right; the committee was to continue and was required to report at the next conference, last year. A report was then made and it was continued again.

Now, this is the Committee on Railway Legislation, and the call for this Convention embraces as one of the subjects, "Harmony in Legislation." What strikes me as a little peculiar is that the gentleman from New York says there can be no harmony in legislation so far as the state legislatures are concerned. He wants uniformity as to car couplers. He wants to see better safety appliances in his state, and he says he cannot hope for relief from state legislatures. Very well; if there cannot be any harmony among state legis-

latures, then we have simply to consider what recommendations should be made to Congress by the Interstate Commerce Commission. As to that, I suppose the Interstate Commerce Commission, in the performance of its duties, has made recommendations to Congress, and will continue to do so from time to time, about such matters as it deems proper.

What is the harmony that this committee is to report upon, and what is the harmony that is desired? I said two years ago that I was anxious to hear that report. Perhaps I may have been selfish, because in our state the railroad commissioners are required to make recommendations from time to time for such legislation as is desirable. I presume that is the case in other states. And although such recommendations do not mean that the legislature will always legislate as they desire, yet it aids in directing legislation and in securing it to some extent.

An expression of opinion by this Convention would carry weight, particularly as to harmony in legislation by the states. I had hoped that this committee would make a report concerning some matter or matters which are the subject of legislation in which it is desirable that there should be harmony.

A motion was made to take a recess until 2 o'clock, which was agreed to, and the Convention took a recess accordingly.

At the expiration of the recess the Convention reassembled.

The CHAIRMAN: At the suggestion of the Committee on Order of Business the pending matter, respecting the report from the Committee on Railway Legislation, will be put aside for the time being, and we will now listen to the report of the Committee on Reasonable Rates. I call on the chairman of that committee to make the report now.

REPORT OF COMMITTEE ON REASONABLE RATES.

Mr. FLEMING: Mr. Chairman, I feel almost like offering an apology to this Convention for the length of this report. The questions discussed are live questions—questions which come up in private conversations, in the halls of legislation, in the halls of constitutional conventions, and I may say in the courts of justice—and the importance of the subject must be our excuse for the length of the report. Is it the pleasure of the Convention that I shall read it?

The CHAIRMAN: It is, undoubtedly. I do not think there is any necessity for an apology in respect to the length of it. You are not accustomed, as we happen to know, to putting things in writing that have not something to them.

Mr. FLEMING: The report, Mr. Chairman, is as follows:

At the Convention of railroad commissioners, held in Washington, D. C., in May, 1890, the following resolution was adopted:

Resolved, That the Chairman of this Convention appoint a committee of five, who shall make a report to the next convention on the following topics, viz:

“I. What is the best standard of a just and reasonable rate, and what elements should be considered in determining the reasonableness of a rate?

“II. Is the question of a reasonable rate, under the decisions of the Supreme Court of the United States heretofore rendered, necessarily a judicial question, and what legislation on the subject of reasonable rates, state and national, and is within the power of the states and of Congress, is desirable?”

Responsive to this resolution, your committee begs leave to submit the following report, in which, for the sake of

convenience, the subject is treated under three heads, as follows:

I. Is the question of a reasonable rate, under the decisions of the Supreme Court, necessarily a judicial question?

II. What is the best standard of a just and reasonable rate? What elements should be considered in determining the reasonableness of a rate?

III. What legislation on the subject is desirable?

I.

Is the Question of Rates Necessarily a Judicial One?

At common law a common carrier was entitled to charge a reasonable rate; but it was competent for the King or Parliament to determine by license or by statute what was reasonable. In the absence of limitation in the grant the question was left for the courts to determine. This common-law rule seems to have been followed in this country.

In the absence of all legislative regulation upon the subject, either by general law or by charter, a railway company is entitled to charge a reasonable rate for passenger and freight travel and traffic, and in such case it is for the courts to decide what is reasonable. (*Chicago, &c., R. R. Co. vs. Iowa*, 94 U. S., 161; *W. & St. Paul R. R. Co. vs. Blake*, 94 U. S., 180.)

When the legislature, either by charter or general law, gives the right to charge a reasonable rate in the absence of other legislative provision, the question of what is a reasonable rate, is a judicial one, although the statute authorizes a board of commissioners to fix a schedule. (*Chicago, &c., R'y Co. vs. Minn.*, 134 U. S., 459.)

But, in the absence of contractual rights to the contrary, it is competent for the legislature itself, or by board of commissioners, to fix maxima charges, and railroad corporations will be bound by such maxima. (*Stone vs. Farmers' Loan*

& Trust Co., 116 U. S., 337; *Munn vs. Ill.*, 94 U. S., 121; *Peik vs. Chicago*, 94 U. S., 178; see *R. R. Co. vs. Iowa*, 94 U. S., 161; *P. R. R. Co. vs. Miller*, 132 U. S., 75; *R. R. Co. vs. M'fg Co.*, 16 Wal., 318; *Gibbons vs. Ogden*, 9 Wheat., 203; *R. R. Co. vs. Maryland*, 21 Wall., 471; *W. & St. P. R. R. vs. Blake*, 94 U. S., 180; *Dow vs. Beidelman*, 125 U. S., 686. See also 15 Wall., 232; 92 U. S., 260; 102 U. S., 691; 118 U. S., 557; 93 U. S., 103; 114 U. S., 196.)

What will constitute a vested right in a railroad company in the matter of rates has been the subject of no little discussion. It is clear that the right of public control exists where there is an express reservation at the time the charter was given of the right to alter, amend, or repeal, whether such reservation be by constitutional or legislative act. It has been decided that a grant to a railroad company to fix its own rates does not divest the public of such power of control. (*Stone vs. Farmers' Loan & Trust Company*, 116 U. S., 307.)

It has further been held that authority to charge not exceeding the maxima named in the charter does not take away such right of control. (*Ga. R. R. Co. vs. Smith*, 128 U. S., 174.)

The rule stated means that the right of control is impliedly reserved unless it expressly appears that this reserved right is surrendered. In other words, the grant must be inconsistent with any reservation of the power to alter, amend, or repeal. (*Ga. R. R. & B. Co. vs. Smith*, 128 U. S., 174; *Ruggles vs. Illinois*, 108 U. S., 531; *Stone vs. Wis.*, 94 U. S., 181; *P. R. R. Co. vs. Miller*, 132 U. S., 75; *Stone vs. Farmers' Loan & Trust Co.*, 116 U. S., 307.)

This doctrine is strongly and repeatedly asserted. In addition to the authorities already quoted, see 10 How., 511; 13 How., 71; 1 Wall., 116; 96 U. S., 63; 97 U. S., 697; 103 U. S., 1; 108 U. S., 506.

And it is questionable whether this right of control can be bargained away at all, even by express words. (11 Peters, 547; 108 U. S., 541; 94 U. S., 645; 118 U. S., 586.)

It is also doubted if a railroad charter can be found in which this right of control is expressly parted with. It would, therefore, seem that all railroads are subject to the right of public control as to rates.

Of course, this view is a departure from the principle applied to private corporations, and assumes that railroad charters, in the matter of rates, are not within the rule of construction laid down in the Dartmouth College case. Among the reasons given in the opinions for this exception are the following :

1. The police power, public necessity, or the public welfare.
2. Railroads are quasi-public corporations.
3. They are public highways.
4. They are the instruments of commerce.
5. Such grants are franchises of a public character appertaining to the Government.
6. Such grants are in derogation of the common right and in the nature of exclusive privileges or monopolies.
7. Railroads are common carriers and the public have an interest in their use.

Chief Justice Taney in the case of *Charles River Bridge vs. Warren River Bridge*, 11 Peters, 547, established the doctrine that in grants affecting the public right nothing passes by implication, and among other propositions states the following : " The object and end of all government is to promote the happiness and prosperity of the community for which it is established ; and it can never be assumed, that the government intended to diminish its power for accomplishing the end for which it was created." *

*In *People vs. Budd*, 15 Am. St. Rep., 482, the New York court of appeals, in a leading case, sustains the right of control and plants it broadly on the police power of the state. The supreme court of Michigan, in *Wellman vs. O. & Gr. Tr. R'y Co.*, decided December, 1890, holds substantially the same views.

The court says, in the case of *Boyd vs. Alabama*, 94 U. S., 650: "We are not prepared to admit that it is competent for one legislature, by any contract with an individual, to restrain the power of a subsequent legislature to legislate for the public welfare. The power thus to legislate is an attribute of sovereignty."

In the case of the *Fertilizing Co. vs. Hyde Park*, 97 U. S., 666, the doctrine of strict construction as applicable to corporations which affect the public is thus stated: "Every reasonable doubt is to be resolved adversely. Silence is negation, and doubt is fatal to the claim. Nothing is to be taken as conceded but what is given in unmistakable terms, or by implication equally clear. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this court."

The distinction between grants to public and private corporations is recognized in the case of *Holyoke Co. vs. Lyman*, 15 Wall., 514, where the court declares that "public rights, in all jurisdictions, are subject to legislative control, * * * and that the owners of such rights are bound by such reasonable regulations as the state may make and ordain." It is upon this ground that Judge Jeremiah Black rests his argument for the right of public control.

In the case of *Wabash R'y Co., &c., vs. Illinois*, 118 U. S., 586, a part of the court uses this language: "The highways in a state are the highways of the state. Convenient ways and means of intercommunication are the first evidence of the civilization of a people. The highways of a country are not of private but of public institution and regulation. In modern times, it is true, government is in the habit, in some countries, of letting out the construction of important highways, requiring a large expenditure of capital, to agents, generally corporate bodies created for the purpose, and giving to them the right of taxing those who travel or transport goods thereon, as a means of obtaining compensation for their outlay. But a superintending power over the high-

ways, and the charges imposed upon the public for their use, always remains in the government. This is not only its indefeasible right, but is necessary for the protection of the people against extortion and abuse. These positions we deem to be incontrovertible. Indeed, they are adjudged law in the decisions of this court. Railroads and railroad corporations are in this category."

In *Olcott vs. The Supervisors*, 16 Wall., 694-5, the court says: "The railroad can, therefore, be controlled and regulated by the state. Its use can be defined; its tolls and rates for transportation can be limited. * * * That railroads, though constructed by private corporations and owned by them, are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. * * * Whether the use of a railroad is a public or a private one depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the state. Though the ownership is private the use is public. So turnpikes, bridges, ferries, and canals, although made by individuals under public grants, are regarded as *publici juris*."

"The right to exact tolls or charge freights is granted for a service to the public. The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used. That all persons may not put their own cars upon the road, and use their own motive-power, has no bearing upon the question whether the road is a public highway. It bears only upon *the mode of use*, of which the legislature is the exclusive judge."

In *R. R. Co. vs. Maryland*, 21 Wall., 471, the court says: "This unlimited right of the state to charge, or to authorize others to charge, toll, freight, or fare for transportation

on its roads, canals, and railroads, arises from the simple fact that they are its own works, or constructed under its authority. It gives them being. It has a right to exact compensation for their use. It has a discretion as to the amount of that compensation. That discretion is a legislative—a sovereign—discretion, and in its very nature is unrestricted and uncontrolled. The security of the public against any abuse of this discretion resides in the responsibility to the public of those who, for the time being, are officially invested with it. In this respect it is like all other legislative power when not controlled by specific constitutional provisions, and the courts cannot presume that it will be exercised detrimentally.”

The power of Congress to fix rates on the interstate business of railroads would seem to be expressly provided for in section 8, clause 3, of the Constitution, which declares that Congress shall have power to “regulate commerce with foreign nations and among the several states” (see *Crandall vs. State of Nevada*, 6 Wall., 42), and a like right to regulate internal commerce to be reserved to the states respectively.

In *Gibbons vs. Ogden*, 9 Wheat., 203, Chief Justice Marshall, who wrote the leading opinion in the Dartmouth College case, says: “Inspection laws, quarantine laws, health laws, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, &c., are component parts. No direct general power over these objects is granted to Congress; and, consequently, they remain subject to state legislation.”

In *Sherlock vs. Alling*, 93 U. S., 103, it is said “the commercial power conferred by the Constitution is one without limitation. It authorizes legislation with respect to all the subjects of foreign and interstate commerce, the persons engaged in, and the instruments by which it is carried on.”

It was decided in the case of *East Hartford vs. Hartford Bridge Co.*, 10 How., 533, that in the grant of a ferry

privilege the parties thereto do not stand toward each other in the attitude of those under a contract such as is contemplated in the Constitution and as could not be modified by subsequent legislation, the court holding that they were acting in relation to a public object, being virtually a highway across the river, and that the acts of the legislature with reference thereto must be considered rather as public laws than as contracts.

It was settled in England by Lord Ellenborough and Lord Hale that the King's license would not protect a monopoly in the right to charge unreasonable rates. (Lord Hale's Treatise De Portibus Maris; *Allnut vs. Ingles*, 12 East., 527.)

Such franchises were in England a royal prerogative, and were vested in the King as a means by which they could be regulated. This was the English mode of exercising a prerogative of government. It was vested in the King for public and not for private purposes; hence, according to Lord Hale, "the duties must be reasonable and moderate, though settled by the King's license or charter." But the doctrine of public regulation was not confined to grants of monopoly. It was extended to all cases affecting the common interest, the principle at the bottom in all being the public benefit.

Railways are public highways; they are instruments of commerce; the public have an interest in their use; they possess franchises of a public character; the grants to them are in derogation of the public right, in the nature of exclusive privileges; they are governmental agencies affecting the public welfare, and, for one and all of these accumulated reasons, they are, on the ground of public interest and necessity, subject to control. They are the creatures of the state, and, unless the state has expressly parted with this right of control, the implication attending every charter is that such power is reserved; hence there is no uncertain tone in the declarations of the Supreme Court on the existence of this right.

In the case of *Peik vs. Chicago*, 94 U. S., 178, this broad

language is used: "Where property has been clothed with the public interest, the legislature may fix a limit to that which shall in law be reasonable for its use. This limit binds the courts as well as the people. If it has been improperly fixed, the legislature, not the courts, must be appealed to for the change."

In *Ga. B'k'g Co. vs. Smith*, 128 U. S., 180, it is said by the court, "There have been differences of opinion among the judges of this court in some cases as to the circumstances or conditions under which some kinds of property or business may be properly held to be affected with a public use, but none as to the doctrine that when such use exists the business becomes subject to legislative control. * * * In almost every case which has been before this court, where the power of the state to regulate rates has been under consideration, the question discussed has not been the original power of the state over the subject, but whether that power, by stipulation amounting to contract, had not been surrendered. It is only upon that point that there have been difficulties."

In view of all the authorities, your committee has no hesitation in answering in the negative the question, "Is the reasonableness of a rate necessarily judicial?"

In face of the long line of decisions upon this subject we think that this question would not, at this day, be mooted but for some expressions of the Supreme Court in the Minnesota case, to which, in the judgment of your committee, too much importance has been attached, if indeed they have not been misunderstood.

What is the Minnesota case? Under a statute which, in effect, authorized the board of commissioners to fix a schedule of equal and reasonable rates, the board, without being required to give the railroads any notice whatever, fixed the schedule and undertook to enforce the rate by judicial proceeding. The state courts held that the rates so fixed were binding on the roads and the courts. The Supreme Court

of the United States held, on appeal, that such a statute, so construed, was unconstitutional. In effect the latter court holds that the authority delegated to the Minnesota commission was not absolute, but limited to a schedule reasonable to the railroads as well as to the public; that under the statute itself any rates fixed by the commission not thus reasonable were *ultra vires*, as without the jurisdiction, and that to compel the railroads, without a legal opportunity to be heard, to submit to rates so established would not be due process of law. The canon of construction in such cases is that the statute must be judged not by what is done, but what must be done, under it, and, as here there was no legal provision for the railroads to be heard by the commissioners, as the discretion of the commission was limited by the statute itself, and, as the railroads were cut off from all inquiry as to whether the limitations so imposed had been exceeded or not, the majority of the court thought the grounds were made out showing want of due process of law. Any views expressed beyond this may be regarded as *obiter dicta*. In this view of it the Minnesota case is easily reconcilable with the Granger decisions.

The power of legislative control is not, however, without limit. The power of the British Parliament is not the test of legislative power in this country. Here the power of sovereignty, which, according to Chief Justice Taney (5 How., 583), is inherent in every government and which is "the power to govern men and things," is not arbitrary or despotic, but restrained by constitutional limitations. In several of the later cases the Supreme Court, in sustaining the exercise of the right of public regulation, have expressly used words of qualification to which some meaning must be given. "This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation * * * the state cannot require railroads to carry without reward; neither can it do that which in law amounts to a taking of private property for public use

without just compensation, or without due process of law." (Stone *vs.* Farmers' Loan and Trust Co., 116 U.S., 331.) These qualifying terms have not as yet received practical application at the hands of the Supreme Court. As that, from time to time, is done, the boundaries of legislative power will be more and more clearly defined. It is too clear to be disputed that there is no power on the part of the state to assume the ownership of the private property of railroads without compensation, and that the private capital or property involved is absolutely sacred. But this is not inconsistent with the right of public control of *the use* of that property while affected with the public interest. The private property rights and interests of railroads are assured of constitutional protection, but this does not extend to the *franchises* received by them as trustees for public benefit. The franchise must ever remain as within the acknowledged power of government to resume or subject its exercise to supervisory direction and control in the interest of the public. We take it also that railway companies cannot be prevented from earning enough to pay operating expenses and to provide for the proper maintenance of the track and necessary accommodation and equipments for the public. In addition, we suppose some profit must be allowed. Some provision must be made to enable railroads to meet their liabilities as common carriers. This much the public interest, upon which rests the power of control, seems to demand.

Judge Brewer, now of the Supreme Bench, in the case of C. & N. R'y Co. *vs.* Dey, 35 Fed. Rep., 879, held that "the rulings of the Supreme Court imply that the legislature may reduce railroad rates until only a minimum of compensation is secured to the owner," and declared the rule to be this, viz: "That where the proposed rates will give compensation, however small, to the owners of railroad property, the courts have no power to interfere. Appeal must then be made to the legislature and the people." The learned

judge added, however, that "compensation or reward implies three things—payment of cost of service, interest on bonds, and then some dividend." That part of Judge Brewer's opinion which holds that interest as provided for in bonds must be reckoned as part of the reward contemplated is not thought to be well reasoned. If rates are dependent on bonded indebtedness, then a different standard would apply to two roads similarly situated in other respects and differing only in the policy which determined whether the road should be built with the capital of the company or with borrowed capital. It seems clear, as the stream cannot rise higher than the fountain, that the rights of mortgagees, lessees, or assignees cannot be more sacred than nor add to those of the corporation. Indeed, this has been so ruled in *Chicago, &c., R. R. Co. vs. Iowa*, 94 U. S., 162. Judge Brewer's opinion also seems to be in conflict with *Dow vs. Beidelman*, 125 U. S., 680.

As it is incompetent for the legislature to deprive railroads of some reward, so also we take it that it cannot authorize rates grossly extortionate and ruinous to the public. (See Justice Miller's opinion in *Chicago, &c., R'y Co. vs. Minn.*, 134 U. S., 459.)

Within the boundaries indicated there is ample scope and jurisdiction for legislative action, and inside those limits, when that jurisdiction is exercised, it is believed, upon principle and authority, that the action of the legislature, or its duly authorized agents, is final and conclusive. This position may be in apparent conflict with some language used in the Granger cases upon the one side and in the Minnesota cases upon the other. From the Peik case (94 U. S., 178) it might be inferred that the legislative right of control is wholly without limit; that the question of rates, whenever the legislature chooses to make it so, is necessarily and exclusively a legislative one.

From the Minnesota cases it might be supposed that the question of rates, regardless of legislative action, is always

and necessarily a judicial one, but the language must be construed with reference to the facts of the particular case in which it is used.

In the Granger cases the question was whether the legislature could by general law regulate rates at all. In the Minnesota case the question was whether a schedule of rates made by a commission under a power to fix equal and reasonable rates, without the right on the part of the roads to be heard either before the commission or the court, was due process of law. There is no suggestion in the opinion rendered in the Minnesota cases of any intention to overrule the Granger cases; and in the language of the Supreme Court (*W. R'y Co. vs. Ill.*, 118 U. S., 570), "it is difficult to believe the court consciously intended to overrule the former cases without any reference to it in the opinion." Moreover, the separate opinion of Justice Miller, one of the concurring judges in the Minnesota case, expressly reiterates the doctrine of public control.

We conclude, therefore, that neither of the extreme views suggested is correct. The truth oftenest lies in the middle. On the one hand railroads have rights in the matter of rates which the legislature is bound to respect. They are useful and necessary institutions. They are agencies of the state, it is true, but the public would not be benefited by striking down these great enterprises or crippling them so as to prevent their accomplishing the ends for which they are created. It would startle not only the judicial but any fair and honest mind to assert that under our system of laws 165,000 miles of road, employing, according to Mr. Poor's estimate, directly and indirectly, about two million men, representing, with their families, nearly one-seventh of the population of the United States, earning nearly one billion dollars, and carrying annually 472,171,343 passengers and 539,639,583 tons of freight, are so absolutely at the mercy of legislators, however swayed by passion or fury, as to be liable to legal confiscation. Railway corporations have necessary pub-

lic functions, important corporate duties, to perform, the discharge of which the state may compel by law. Means are required to fulfill this great public trust, and it follows as a corollary to the proposition stated that they are entitled to some reward. They are common carriers, and it is the reward to which they are entitled that renders them liable as such for personal injuries and damages to property carried. Without such reward their liability for such injuries and damages must necessarily cease. It is not to the interest of the public that railroads should be absolved from such responsibility and obligations; hence it is that the shield of the Constitution is placed over them; but, on the other hand, this shield cannot be turned into a weapon of danger or injury to the public. Money is power. Already the amount collected from the people by the railroads is \$964,816,129 per annum. The capital actually invested in railroads is, in round numbers, \$5,000,000,000, while the stock and bonded indebtedness is \$10,000,000,000. The mileage and capitalization of railroads are doubling almost each decade. Every year the tendency to the consolidation of this enormous capital is greater. Free from the restraint of legislative power, it is not impossible for the few who represent these great corporations, by increase of rates, to levy a tribute upon the commerce and agriculture and travel of the country, additional to that now exacted, larger than the total income of the Government of the United States raised for all purposes. Such power in the hands of ambitious and unscrupulous men would be dangerous to the Republic. We need look no further for ground upon which to base the right of public regulation than that which is to be found in the maxim "*Salus populi suprema lex.*"

The right of control is based, not only on the principle of sound public policy, but upon the deeper foundation of public necessity.

But it is said that railroads have, and should have, the

constitutional right to charge reasonable rates, and that it is reasonable that they should earn a fair interest, if not upon their capitalization, at least upon the value of their property, and that this question is necessarily a judicial one. This contention is insisted upon by distinguished authors and jurists, and has been pressed with great force upon the courts. It has been presented to and passed upon by the Supreme Court. In the Munn case this court says: "It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question. * * The practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps, more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly, in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. * * * The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation is implied. In fact the common-law rule which requires the charge to be reasonable is itself a regulation as to price. Without it the owner could make his rates at will, and compel the public to yield to his terms, or forego the use. But a mere common-law regulation of trade or business may be changed by statute. A person has no property, nor vested interest, in any rule of the common law. * * * To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no new principle in the law, but only gives a

new effect to an old one." This is a leading opinion of the Supreme Court and is believed to be not only unanswered but unanswerable.

This doctrine is supported in the Ky. R. R. Tax cases, 115 U. S., 334, 335, in which, in answer to the same argument with reference to railroad assessment, it is said, "it is urged that there is no security that the final action of the board of railroad commissioners, in valuing and assessing railroad property may not be unequal, unjust, and oppressive. * * * But the same suppositions may be indulged in, in opposition to all contrary presumptions, with reference to the final action of any tribunal appointed to determine the matter, whether judicial or administrative."

If the right to charge a reasonable rate be a judicial one it must have its origin either in contract or the general law. It has been already shown that it does not necessarily exist in either. Mr. Chitty, in his work on Prerogatives, states that "the superintendence and care of commerce, on the success of which depends so materially the wealth and prosperity of the nation, are in various cases allotted to the king by the constitution. Such prerogative existed in all cases where the whole community were interested. The exercise of rights affecting such prerogative had to be obtained by license or grant." Such prerogatives in the United States are allotted to the state and national legislatures. It is not for the courts to usurp these prerogatives. As said in License Tax cases, 5 Wall., 469, "The court can know nothing of public policy except from the Constitution and the laws, and the course of administration and decision. It has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient; as politic or impolitic. Considerations of that sort must be addressed to the legislature. Questions of policy determined there are concluded here."

It is to be remembered that if there are limitations upon

the legislative power, so also are there upon the power of the judiciary.*

All wisdom is not to be found with the courts, nor will all knowledge die with the judges. Reliance is to be put sometimes upon the restraining power of public opinion. There is a remedy at the polls for redress of legislative wrongs, and the courts must not usurp the prerogatives of the people. The Anglo-Saxon race has always been jealous of judicial power. In America usurpation will not be tolerated. From the time of Alfred the Great, if not coeval with Anglo-Saxon jurisprudence, the judges have been denied the right to pass upon the facts, and of the issues of fact juries have been the sole and exclusive judges.

Under our system of government the legislative department is as supreme in its sphere as the courts are in theirs, and it is not allowable for the courts to substitute their discretion for that of the legislature. The same argument which would give the courts supervisory power over rates fixed by the legislature would extend to the work of assessment. Why has not a railroad the same right to have the court pass on the question of valuations of its property for tax purposes as upon rates fixed by legislative authority?

The power to regulate is no more the power to destroy than the power to tax, and certainly rests upon as safe a basis as the legislative power to regulate the price of bread or charges of ferrymen, hackmen, millers, tavern-keepers, etc., and it is not easy to see how capital invested in railroads can be more sacred in the eyes of the law than that engaged in such employments as these, or money itself, the rates of interest upon which are subject to legislative control. Lottery and brewery franchises granted for a term of years

* Story, in his work on the Constitution, section 520, quotes approvingly the following from Montesquieu: "There is no liberty if the judiciary be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator."

have been repealed by legislative action within the term, and when appealed to for protection the courts have refused to interfere upon the ground that the legislature, not the courts, is the judge whether such repeal is demanded by the public interest.

The rule always and everywhere has been that where public rights are involved private interests must be held in subordination, and of the public interest the legislature is in such matters the guardian.

Nor can authority anywhere be found that such legislative action, though affecting private interests, is not due process of law. Due process has been defined to be "one which, following the forms of law, is appropriate to the case, and just to the parties to be affected" (111 U. S., 701); but even in cases of private property it does not always demand judicial determination or necessarily imply a regular proceeding in a court of justice or after the manner of such courts. (96 U. S., 97; Ky. R. R. Tax cases, 115 U. S., 331.)

It has been expressly decided that due process is not intended to interfere with the police power of the state. (113 U. S., 27.)

It has also been held that the action of public officers constituting inferior quasi-judicial tribunals, such as boards of supervisors, commissioners of highways, and the like, on matters pertaining to their jurisdiction are not subject to restraint by injunction. (See authorities: Lawyers' Digest U. S. cases, vol. 118, p. 437, note; *Miss. vs. Johnson*, 4 Wall., 475; 24 How., 508; 107 U. S., 426; 13 Wall., 83.)

Where rights of the public are involved these may be determined by summary remedies outside of the ordinary judicial forms of law. In all of this class of cases, however, it is understood that the questions of interest involved may, under certain abuses and excesses, become judicial.

The judgment of a court without jurisdiction is void. The conclusions of a jury must be based upon the facts, and if their verdict be so contrary to the truth as at first blush

to shock the conscience it will be set aside. So executive and ministerial officers must act within the limits of their authority. If the assessment of property be such as to amount to practical confiscation, or in case of corruption or fraud, the courts may declare the assessment void. On the same principle, if a commission shall without notice fix a schedule of rates ruinous to the railroads or the public, the courts, upon proper application, may interfere; but the power of the judiciary to interfere in administrative or legislative matters is well known by the profession to be limited to narrow bounds. Under the construction contended for sufficient protection is afforded the railroads and sufficient latitude is left for the exercise of summary control. The roads would not be deprived of their constitutional property rights, and there would not obtain those delays and that expense incident to judicial proceedings which, if applied to public regulation, would prove fatal to the efficient exercise of the right. By way of summary we submit the following propositions:

1st. In absence of legislative regulation railroads are entitled to charge a reasonable rate, and under such circumstances the question of what is reasonable is judicial.

2d. In the absence of vested rights to the contrary the legislature has the right to control rates, and such control may be exercised (a) directly by fixing the *maxima* in the statute, or (b) by delegated authority to a board of commissioners to fix reasonable *maxima*, provided the right to a hearing be secured and the rule of reasonableness be prescribed.

3d. A vested right in rates will not be implied, but the right of control will by implication be reserved unless such right is bargained away by language inconsistent with such reserved power of control.

4th. The right of public control must be exercised within those constitutional and legal limitations which environ all legislative or administrative acts. Regulation does not mean confiscation nor the right to authorize rates ruinous to the public, nor can a railroad be compelled to carry without reward.

The views and conclusions herein presented are fortified by thoughtful consideration of—

II.

*What is the Best Standard of a Just and Reasonable Rate?
What Elements Should be Considered in Determining the
Reasonableness of a Rate?*

Such consideration at once suggests the necessity of establishing other tribunals than the courts for dealing with the subject, and makes it apparent that the machinery of the courts, whether at law or equity, is ill adapted to the work of rate-making. Nothing could be clearer than that it would not do to leave this duty to the haste of jury trials, even if juries could be had competent to deal with the subject. The intricacies and difficulties, the ever-changing conditions and circumstances which surround and embarrass this delicate task, point to a tribunal composed of those who make a specialty of the business; a tribunal who can bring to the aid of special adaptation, training, and experience a thorough knowledge of all the material facts, some of which, at least, can only be had by personal inspection of the theater of railroad operations; a tribunal which can command the time to master all necessary details and can alter and adapt the rates to the ever-changing complexities and circumstances of the case. It may almost be laid down as an axiom that the chances of error in the conclusion reached as to the reasonableness of any particular

rate will be in the ratio of the distance of the determining tribunal from the theater of such operations and the lack of opportunity to investigate and weigh details.

Again, it is thought necessary to impose penalties for such offenses as discrimination and extortion, and it seems illogical to attach a penalty to an act the virtue or vice of which rests in a discretionary unexpressed judgment. In such cases provision should be made for some standard or criterion by which the parties concerned may determine in advance their guilt or innocence. Moreover, there is a fundamental difference between the statement or comprehension of a principle and the application of that principle to details. The Constitution may establish the principle that a tariff should be levied for revenue. Is it to be supposed that every tariff schedule imposed by Congress under such a provision would be subject to review by the courts?

The legal principle upon which rests the *ad valorem* assessment of property is that such valuations should be uniform, fair, and just. But when has a state imposed the duty of making such assessments upon the courts? Indeed, the courts have held that such duty is essentially administrative, and that under our system, where provision is made for other officers to do the work, the courts cannot constitutionally perform such administrative acts.

The legal principle, upon which rests the question of rates, if left to the courts to determine, is that they should be reasonable. In the application of such principle it is apprehended that the court would proceed upon the idea that the road is entitled to a fair return upon the value of the property, and thus would have to begin with the work of assessment, a work which, in taxation, it would not do if it could and could not if it would. Another step in such undertaking would be the classification of the articles to be transported; and the number of classes having been ascertained it would be necessary to determine what proportion of the whole tariff would be allotted to each class. It would also

be necessary to fix the charges between the different stations or depots. How vast the complexities! How infinite the details of such a work! How much of the burden shall be placed upon the through business and how much upon the way business? What will the traffic bear? What will be the effect of any given rate upon the future business of the road? What regard must be had to the forces of river and railroad competition? What force must be given to the cost of service, to the risk taken, to the value of the article transported, to its bulk, to its weight, to the necessities of the shipper and producer, to the laws of trade, and to the interests of the public? How is it possible for any jury or judge to determine these questions? Manifestly they address themselves to the sound business rather than a legal discretion. The question is one of fact rather than of law. Moreover, the facts of to-day may not be the facts of to-morrow with reference to any road. The conditions and circumstances affecting each and every railroad are constantly varying. Clearly this work is administrative and not judicial in its nature.

Law is a rule of action. By what rule can the problem of rates be solved? As each case would be decided under a different state of fact, how could the judgment in any case control or settle a principle or be made authority in any other?

The Interstate Commerce Commission, in its Fourth Annual Report, of December 1, 1890, shows so clearly that the matter of rate-making, *ex necessitate rei*, is administrative in character that we are only prevented from inserting the article by reason of the length which this report has already attained. (See pages 13 and 14 of said report.)

Among other things it says: "In order that the question of rates should be one of law it must be essential that there be some clear and definite rules whereby rates can be made; rules obligatory upon the carriers as well as upon the tribunals that regulate them, and which may be enforced

against the carriers as well as in their favor. If such rules existed stockholders might have them enforced as against the action of the directors, or other officers, in fixing the rates, and the courts in the light of reason and authority, could deal with and apply them without at all entering upon the field of discretion and business policy. But every person familiar with the subject of transportation by rail is perfectly aware that there are no such rules. No managing officer claims that they exist, and not one undertakes to regulate his action in the determination of rates by fixed, definite, unchangeable principles such as constitute rules of law. On the contrary, any step leading to the establishment of the rates that shall be charged for transportation begins and ends in the exercise of discretionary authority. Rates are never measured exclusively by the weight of the articles carried, or by bulk, or by the cost to the carrier transporting them, or by the value to the owner in having them transported; and if all of these and other considerations bearing upon the subject are taken into account in the determination of rates, as they habitually are, there is no rule by which it can be determined how much importance should be attached to any one, or any combination of them.”*

There is no constitutional difficulty in the way of boards of commissioners dealing with this subject. The general doctrine is “that when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, is conclusive upon

* In view of the fact that the language of the interstate commerce act is substantially the same as that of the English railway act and the rule of construction of such language by the English courts is regarded in such cases as authority (see 110 U. S., 619; 5 Pet., 264; 2 Pet., 1; 98 U. S., 440), we cite the following authorities to show that the question of the reasonableness of a rate is a question of fact and not of law: 3 Nev. & M. 441; *ib.*, 5; 2 Nev. & M., 73. In *Johnson vs. Towsley* (18 Wall., 72) it was held that decisions of fact unaffected by fraud or mistake are conclusive on the courts.

all others." (Johnson *vs.* Towsley, 13 Wall., 83.) Under this principle, railroads can be compelled to abide by the decisions of commissioners upon questions of fact. The adoption of this policy of regulation would doubtless secure prompt obedience to the reasonable demands of such public officers.

From what has already been said, it is evident that no satisfactory definition of what constitutes a reasonable rate can be given in abstract form. It has been well said that it is easier to determine whether a particular rate is unreasonable than to give an actual definition of the term itself. The important underlying principle which has been styled the "golden rule of rates" is that the rate must be reasonable, as far as may be, to all parties concerned—that is, to the shipper and producer, to the railways and to the public. The rule formulated by the Prussian authorities is that—

1st. The tariff should be clear.

2d. It should be equitable.

3d. It should not produce bad indirect effects.

4th. It should not give opportunity for corruption.

The Board of Railway Commissioners of Minnesota states its principles as follows :

1st. Transportation of persons and property without discrimination as to persons or places.

2d. Safe conveyance of the same.

3d. The best service the system is capable of.

4th. The cheapest transportation that is compatible with these things and is just to the companies doing the service.

These propositions are to be commended. They are put in their true relations. To meet the sense of justice of the American people rates must conform to them. Efficiency first, necessary earnings consistent with the rights of others afterwards, is the proper basis.

The views of the Iowa Railway Commission are thus expressed: "From the standpoint of the carrier it is needless to make a rate less than fair and reasonable. The commissioners will labor for reasonable rates, insisting, as against the carrier, that they shall not be more than fair and reasonable, and, as against the shipper, that they shall not be less than reasonable." The trouble with this rule is that it does not go far enough. In its application it seems to fail where it is most needed. A railroad should not be made to bear or assume losses resulting from the improvidence, mismanagement, or unprofitable employment of others; nor should the shipper be required to pay for ill-advised investments or gross mismanagements of railroads, nor to make profitable at once investments that were intended or that should have been intended to wait upon the future. Between the opposing interests of railways and shippers there oftentimes arises an irrepressible conflict. In such cases what, under the Iowa rule, is to be done? Evidently some other chart must be looked to in this sea of troubles. The interests of the producer are entitled to some consideration. The public interests also are to be consulted. It may generally be assumed that where the rate can be made satisfactory to both shipper and railway it will be fair to the public; but where this cannot be done, whether the solution lies in the way of compromise between the demands of the two parties directly interested or in adopting the views of one or the other, may best be determined by regard to the interests of the public at large; for underneath, around, and over all is the public weal, by which all other interests must be controlled. It is to be kept in mind that railways are the agencies of the

state, and the state is the guardian of no particular interests, but the interests of all. To this the axiom "extremes meet" is applicable. In the long run, what is best for the public is best also for the railroads and the shipper. So it has transpired that when the state has prescribed rates which were regarded at the time as ruinous by the railroads, experience has proved them the most remunerative in the end. Generally, under similar conditions and circumstances, it is unreasonable to make a greater or even the same charge for a less service than a greater. So it was held by an English court (10 Meeson & Wel., 420) that it was unreasonable to charge the same for a large parcel containing separate bundles as for the same articles separately, and to charge the same prices for delivery at the depot as at the houses of the consignees; also that the difference in rates must bear some proportion to the difference in cost of carriage. (*Harris vs. Cockermouth, etc.*, 1 Nev. & Mac., 97, 102, 227; see also 3 C. B. (N. S.), 693; 6 C. B. (N. S.), 639, 655; 1 Nev. & Mac., 12, 143; 2 Nev. & Mac., 185.)

Into the final determination of the reasonableness of rates manifold considerations must enter—cost of service, mileage, nature and number of gradients and curves, cost of construction, operating expenses, amount and regularity of traffic to and fro, gross and net receipts, value of railroad property and of freight hauled, management, whether economical or expensive, competition, future as well as present prospects, trouble, expense, and risk. These are some of the elements which enter into the consideration. The laws of trade, the necessities of business, the lessons of experience, the interest of the producer, the shipper, the railway, and the public have all to be consulted, and at last the conclusions reached may be at fault. They may not be entirely satisfactory to the tribunal forming them, for in the nature of things there can be no mathematical certainty here. The best that can be hoped for is the exercise of a wise discretion based on the application of a sound principle to an

almost infinite variety of facts and conditions leading to the best practical results possible under all the circumstances.

The rule supposed to be applied by railways is to make the rate all that the traffic will bear. Under the operations of such a rule undue burdens may be imposed upon some traffic, while other traffic may be carried too cheaply. Indeed, the greatest evil of rates fixed by railway officials, when unrestrained by law, arises from the fact that, to meet competition, rates upon through traffic are made so low as to create an apparent necessity for onerous charges at non-competing points. The fact that such charges prevent producers from making fair profits, diminish and even destroy the traffic, does not always suffice to remove the temptation to reach after immediate results.

To avert this evil Germany and Holland have adopted the mileage rule, while in other countries the long and short haul rule is relied upon. Whatever may be thought of this, it is certain that rates should not be too much out of proportion to distance, and that in the future there must be a scaling down of rates at non-competitive points, even though at the points of competition rates have to be *advanced*. It is believed that this could be done in many cases without violation of the salutary law which requires that rates should be accommodated to the circumstances of the traffic.

While rates must be elastic and accommodate themselves to the traffic rather than force traffic to adapt itself to them, this must be done with reasonable regard and relation to cost of production and the value of transportation service to producer and shipper. Some degree of favoritism may be necessary, but the extent to which it may be lawfully carried has its bounds to be determined by the principle referred to and by the special circumstances of the particular case.

Railroads are entitled to fair consideration. They have rights that must and will be respected. They have helped enrich and make prosperous our country. They are pro-

motors of civilization. Among their managers are some of the ablest and best of our citizens, who have built in the United States 44 per cent. of the railroad mileage of the world, and furnished the best models of railroad enterprise and management.

Whoever is entrusted with their control will accord to the private capital involved opportunity for generous return, and if such an one should so far forget his duty as intentionally to deal unjustly he would forfeit the esteem of all just men.

The fact that the courts and the people insist that the matter of rates is of legislative and administrative rather than a judicial nature is not to be regarded as a mark of hostility to railroad corporations. The question is simply one of public policy; the purpose, effectual means of control; the object, to shift to apt tribunals the responsibility of securing justice to all the interests involved, and not the deprivation of reasonable allowance by arbitrary enactment or official act. By remanding the question to the legislative or administrative department of government no one pretends that the problem of what is reasonable is solved or shunned.

The responsibility is shifted, not avoided. That problem remains still to be worked out on lines fair alike to private capital and the public welfare.

The answer to the question—

III.

What Legislation is Needed?

Must depend upon the standpoint from which the subject is viewed. On the part of the railways it is urged that returns on railroad investments are low enough; that competition may be relied upon to keep rates reasonable, and that no legislation on *this* score is necessary. It is evident that such plea is not well taken as to local rates, and the constant tendency

to consolidation and combination between railways is sufficient to show that the laws of competition will not always obtain even at the centers of trade. Sixty-four of six hundred and one companies reporting to the Interstate Commerce Commission control and operate 64.32 per cent. of the entire railroad mileage of the country. If it be true that present rates, taken as a whole, may be said to be reasonable, the necessity of public control remains to protect the people against arbitrary and excessive rates where competition fails by reason of combination, and to protect the local shipper where the roads have the monopoly. But the statement that present rates are unremunerative cannot be allowed to go wholly unchallenged. The Interstate Commerce Commission makes the total mileage in operation in the United States on June 30, 1889, at 153,835, and the total earnings and income for the previous year at \$1,089,985,831. Deducting for taxes \$27,590,394; for rentals, etc., \$96,330,391, and for operating expenses, \$644,706,701, we have left as a net income \$321,358,345, or, say, 3½ per cent. on the present capitalization. This, it is claimed, shows that the tolls, considered as a unit, are exceedingly moderate. The current rate of interest paid by the Government is 3 per cent., and a return of 3½ per cent. on the private capital employed in railways certainly cannot be considered unreasonable to the public; but this estimate is based not upon the actual cost of the roads, but upon their capitalization, which is quite a different thing. It is conceded that the prime factor in the problem of rates is the value of the property, and that one of the best guides to the ascertainment of this is the amount of capital really expended. The difficulty is to discover the amount of this capital. The data which would show it are generally kept secret, and present owners are sometimes without the means of furnishing it. Information relating to this subject prior to 1874 is too meager and unreliable for use, but estimates may be formed from that date.

Poor's Manual shows that the capitalization of the rail-

ways of the United States built from 1880 to 1883 is double their actual cost, and confirms similar estimates elsewhere made, showing that this proportion between cost and capitalization holds good for the past fifteen years. It is believed that \$30,000 per mile, honestly and judiciously expended, would duplicate the entire mileage of the country, including terminals; and there is good authority for the statement that for every mile of railway costing more than \$30,000 ten can be found that have cost from eight to twenty thousand. The eastern two hundred miles of the Kansas Division of the Union Pacific, capitalized at \$105,000 per mile, though built in the era of high prices, is said to have cost less than \$20,000 per mile. Mr. C. Wood Davis, in his contribution to the *Arena Magazine*, February number, 1891, says that the 411 miles of the Missouri, Denver, Memphis and Atlantic line cost \$4,920,000, while its bonded debt exceeded this sum by \$1,641,000, and the total capitalization was \$8,202,000 in such excess. He also states that the 107 miles of the Kansas Midland, which cost but \$10,200 per mile, was capitalized at \$53,000; that the Columbus and Cincinnati Midland, built at a cost of \$17,000 per mile, is capitalized at \$57,000 per mile, and that without any addition to the property of the corporation, by a mere fiat, the liability of the Santa Fé road was increased more than \$100,000,000; thus by Credit Mobilier and fiat devices the watering process has been carried to enormous proportions. Mr. Poor figures the total average capitalization at the close of the fiscal year 1889 at \$60,309 per mile, and the total mileage operated at 160,544. Estimating the real capital expended at \$30,000 per mile, it appears that the tollage of the United States should be based on a valuation of \$4,816,320,000 instead of \$9,682,248,096, as it is. In an appendix to this report we give two tables, prepared by Mr. Davis, furnishing the details of calculations based upon such eliminations carried back to 1874. Beginning with 1874, when 69,273 miles of road were in opera-

tion, and assuming that the capitalization then existing was based on money actually expended by the owners, and separating the watered capitalization on subsequent construction, he shows by the first table that the earnings credited to the watered capital in the subsequent fourteen years amount to \$2,422,508,455—sufficient to construct 80,752 miles of the 145,387 operated in 1888. From the second table it appears that, after giving compensation at the rate of 6 per cent. per annum for all the capital actually employed except that furnished by the users in the form of tolls in excess of such 6 per cent., in fourteen years there has been taken from the railway users in excess of such 6 per cent. the sum of \$1,592,280,271 from traffic earnings alone—sufficient to build 53,076 miles of railway—while, in addition, from miscellaneous earnings, such as rents of lands, tracks, buildings, terminals, sales of stocks, bonds, etc., he claims the roads have received as much more. Taking another view of it, Mr. Davis says that railways well located and mortgaged for 80 per cent. or less of actual cost can dispose of from $3\frac{1}{2}$ per cent. to $4\frac{1}{2}$ per cent. bonds at par; but for badly located or poorly managed roads, often failing to pay interest, we may call 5 per cent. a fair rate; and on this basis the annual net revenue of roads existing at the close of 1888 from traffic, rents, interest, dividends, and all other sources should not exceed \$234,123,000, whereas the net traffic and other earnings for that year were \$405,220,000, an excess of \$171,097,000. This writer also claims that, while in the eleven central farming states railway earnings have in eighteen years increased 175 per cent., the increase of value in the wheat and corn crops in those states only increased 57 per cent., indicating that the railways are taking a constantly increasing proportion of the proceeds arising from the sale of farm products. He also calls attention to the fact that in these states railway revenue in 1870, when times were prosperous with the farmers, was \$12 for each unit of the population

as against \$18 in 1888, an increase of 50 per cent. in the *per capita* tax.

The corrective power of legislation has proved its efficiency and must be constantly resorted to. The interstate commerce act is not sufficient, as it now stands, to provide suitable remedies. The findings of the Commission, while intended so to be, are not in fact even *prima facie* proof in the courts. It may not be necessary to authorize the Commission to fix rates, but the law should at least be amended so as to make its findings on questions of fact as final and conclusive as the acts of other administrative officers. We are also of the opinion that, to deal properly with this subject, the labor to be performed in interstate matters is too much for five men, and authority should be given for the appointment of assistant or sub-commissions when required. We further recommend that state legislation be brought as soon and as far as possible in unison with interstate control. When state and interstate commissions are put in accord with each other, so that one shall act as supplementary to the other, each moving in its own orbit, as part of the great whole, out of the harmony of such a system the best results are to be attained.

In order to put the substance of these views into convenient form for intelligent action on the part of the Convention, your committee submits the following resolution :

Resolved as the sense of this Convention :

1. That it is competent for the Congress of the United States and for the legislatures of the various states to regulate, within their respective spheres, the rates of freight and passenger traffic and travel, subject only to those legal and constitutional limitations which, under our system of government, circumscribe the exercise of all legislative and administrative acts.

2. That it is within the power of Congress and the state legislatures to delegate the power of reasonable regulation of rates to boards of commissioners, and to make their findings upon questions of fact and schedules of rates fixed by them, after fair legal opportunity to be heard, as conclusive and binding upon the courts as the findings of a master commissioner in chancery in United States courts, as the verdict of a jury, or as the valuations of a tax assessor in matters of ad valorem assessments of property.

3. That uniformity is desirable in Congressional and state legislation on the subject of rates, to the end that public regulation of rates may be practically reached by the active co-operation between state and Interstate Commissions.

Respectfully submitted.

For the Committee :

W. B. FLEMING, *Chairman.*

Approved :

WALKER McLAURIN,

JOHN B. BREATHITT,

JOHN H. KING,

Members of the Committee.

APPENDIX.

TABLE I.

Year.	Miles of railway in operation.	Capitalization per mile.	Net traffic earnings. Per <i>Foot.</i>	Net traffic earnings per mile.	Mileage on which investors are entitled to revenue.	Proportion of earnings per mile on road built by investors at cost of \$30,000 per mile.	Proportion of earnings per mile on fictitious capital.	Earnings each year on fictitious capital.	Earnings of road built subsequent to 1874 from revenue on fictitious capital.	Total earnings from fictitious capital and from capital furnished by railway users and road built therefrom.	Miles of railway built in each year from tolls of fictitious capital and from tolls or mileage built in preceding years from excessive tolls.
1874	69,273	\$58,256	\$189,570,953	\$2,736.57	69,273	\$1,409.10	\$1,327.47	\$91,957,829	\$91,957,829	3,065
1875	71,759	61,652	185,506,438	2,585.13	68,694	1,258.00	1,327.13	91,165,867	\$7,923,423	99,089,290	3,303
1876	73,508	58,562	186,452,752	2,536.50	67,140	1,299.50	1,237.00	82,196,298	16,152,432	98,348,730	3,278
1877	74,112	60,678	170,976,697	2,307.00	64,466	1,142.00	1,165.00	75,074,930	22,308,690	97,383,620	3,246
1878	78,960	59,163	187,575,167	2,375.51	66,068	1,204.41	1,171.16	77,344,577	30,689,989	108,034,566	3,601
1879	79,949	57,790	216,544,999	2,740.76	62,516	1,424.10	1,316.66	82,276,766	45,377,355	127,654,121	4,251
1880	82,146	58,624	255,557,555	3,111.01	61,402	1,591.91	1,519.10	83,234,752	64,617,581	147,852,333	5,262
1881	92,971	60,445	272,406,787	2,930.02	66,965	1,456.52	1,475.00	98,733,550	76,277,210	175,010,760	5,834
1882	104,971	61,303	280,316,096	2,670.42	73,131	1,306.90	1,363.52	99,678,766	85,093,274	184,777,040	6,159
1883	110,414	62,030	293,367,265	2,656.07	72,415	1,285.54	1,370.53	99,209,926	100,999,717	200,209,643	6,574
1884	115,672	61,306	268,064,496	2,318.32	70,999	1,133.66	1,184.66	84,077,689	103,628,904	187,706,593	6,267
1885	123,320	61,398	269,493,931	2,185.32	72,390	1,067.75	1,117.57	80,870,718	111,357,351	192,228,069	6,408
1886	125,185	61,098	300,603,564	2,401.27	67,647	1,179.02	1,222.25	82,903,995	137,748,854	220,652,849	7,355
1887	137,028	58,603	334,989,119	2,444.67	72,335	1,251.87	1,193.00	86,263,444	158,219,012	244,482,456	8,149
1888	146,387	60,731	301,631,051	2,074.61	72,545	1,024.86	1,049.76	86,125,770	151,174,756	237,300,526	7,910
								\$1,311,114,877	\$1,111,473,678	\$2,422,588,455	80,762

The above computations are based on a cost of \$30,000 per mile, and the unwarranted assumption that investors furnished the money to build all the roads existing in 1874.

TABLE II.—Showing Revenue of Investors at Six Per Cent. on Cost of \$30,000 per Mile and Mileage Built from Earnings in Excess of Six Per Cent.

Years.	Miles of railway in operation.	Mileage on which investors' revenue is computed.	Capital furnished by investors on the basis of cost being \$30,000 per mile.	Revenue of investors on basis of six per cent. on cost of \$30,000 per mile.	Revenue of railways from traffic earnings. Per cent.	Earnings in excess of six per cent. on \$30,000 per mile, hence belonging to the railway user, but employed in building new roads.	Miles of railway built from tolls in excess of six per cent. on \$30,000 revenue from which investor has no right.
1874	69,273	69,273	\$2,078,190,000	\$124,961,400	\$189,670,958	\$64,879,558	2,103.
1875	71,759	69,386	2,087,380,000	125,272,800	189,606,458	60,233,658	2,008
1876	73,048	69,357	2,080,110,000	124,806,600	186,492,782	62,616,182	2,088
1877	73,112	67,853	2,035,680,000	122,135,400	170,976,687	68,811,287	1,828
1878	73,960	71,073	2,132,190,000	127,931,400	187,375,187	68,683,787	1,988
1879	78,068	69,184	2,074,020,000	124,481,200	216,644,989	132,103,779	3,070
1880	82,146	69,201	2,076,000,000	124,561,800	230,567,685	130,696,735	4,366
1881	82,436	69,160	2,068,800,000	124,181,600	273,416,787	136,216,787	4,541
1882	104,971	63,110	2,498,570,000	149,490,000	373,316,787	140,702,486	4,257
1883	110,414	64,945	2,698,150,000	159,495,600	393,316,787	141,186,286	4,726
1884	115,673	64,737	2,642,110,000	159,595,600	469,664,496	116,367,266	3,681
1885	123,320	68,524	2,655,730,000	159,343,200	569,493,931	116,180,731	3,612
1886	126,186	68,727	2,601,810,000	158,108,400	574,163,564	144,461,464	4,542
1887	137,028	93,754	3,812,500,000	168,757,200	334,989,119	166,231,919	5,642
1888	145,387	96,572	2,897,160,000	173,823,600	301,631,031	127,801,431	4,260
						\$1,562,280,471	53,076

The CHAIRMAN: You have heard the report of the committee; what action will you take in respect to it?

Mr. MORTLAND: Perhaps it is proper for me to state that I was named as one of the committee to take action in considering the subject which has just been treated in the report, but I did not sit as a member of that committee, though notified; and while I may say that I am prepared to endorse the reasonings and perhaps the principles of law that have been cited as applicable, and am willing to commend the report as being able and sound, I am left very much in the position—if I may be allowed to relate a story—of one of the chief justices in the State of Maine, who once heard an opinion read by one of his associate justices on a matter that was brought before the court. He listened to it very carefully, and when the judge got through he said he endorsed the principle, that it was sound argument, but he said, "You have come to the wrong conclusion." While I fully endorse the report upon the questions that have been raised by our chairman, I am not prepared to endorse the conclusions as to necessary legislation. I am not yet prepared to favor it. I have never believed that, through any process, we are capable as a nation or states to regulate traffic by any rule of law; neither do I believe that the framers of the law intended it.

Mr. WILLIAMS: I wish to say this: It seems to me that, while the article written by Judge Fleming is exhaustive and well prepared, yet I must take issue with him in some particulars. He does not fairly construe the decision of the United States Supreme Court in the Minnesota case.

Now, it seems to me the court in that case held distinctly that the question of the reasonableness of rates is a matter for judicial investigation.

The court says:

By the second section of the statute in question it is provided that all charges made by the common carrier for

the transportation of passengers or property shall be equal and reasonable. Under this provision the carrier has a right to make equal and reasonable charges for such transportation. In the present case the return alleged that the rate of charge fixed by the commission was not equal or reasonable, and the Supreme Court held that the statute deprived the company of the right to show that judicially. The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the elements of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws.

Now, the law of Minnesota is framed so that the rate shall be fixed, and is to be conclusive.

Mr. FLEMING: They also state in another section that they are to be reasonable.

Mr. WILLIAMS: Yes, sir.

Mr. KING: Does anything in that law intimate that the legislature has not the power to delegate its authority in that particular?

Mr. WILLIAMS: They can delegate the power of fixing these rates, but the rates are presumably to be reasonable. After that the power must be given to the court; then it is a judicial question. Now, the Supreme Court held this:

This being the construction of the statute by which we are bound in considering the present case, we are of the opinion that, so construed, it conflicts with the Constitution of the United States in the particulars complained of by the rail-

road company. It deprives the company of its right to a judicial investigation, by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice.

It seems to me the court still clearly held in this case that reasonableness of the rate is a judicial question :

This is just where I differ from the majority of the court. They say in effect, if not in terms, that the final tribunal of arbitrament is the judiciary; I say it is the legislature. I hold that it is a legislative question, not a judicial one, unless the legislature or the law (which is the same thing) has made it judicial by prescribing the rule that the charges shall be reasonable and leaving it there.

This is not the question that I proposed to discuss. I make these remarks in view of the fact of the two resolutions laid before the Convention.

I believe they should make their finding on the reasonableness of the rates.

Now, if the question of fixing the rates is more than a question of fact, then it is a question of law. I claim that the Supreme Court of the United States has expressly said that no commission can fix the rates.

The CHAIRMAN: Are there any other further remarks to be made?

Mr. CAMPBELL: It is evident there is no disagreement as to the report of the committee that precedes the resolutions. I therefore move that the entire report be accepted, and that all of it except the resolutions be adopted.

Mr. FREEMAN: Are these resolutions at the end anything more than a summary of the report, and if you adopt the report do you not adopt practically these resolutions?

Mr. WOODRUFF: There is no question about going into that.

Mr. ROGERS: Let us take up the report and then see about the resolutions. I rise to a point of order as to whether or not the Convention can accept the report with the resolutions left out.

The CHAIRMAN: The motion was to accept and adopt.

Mr. WOODRUFF: The objection raised by the gentleman from Rhode Island was that it is equivalent to adopting the resolutions if we adopt the report.

Mr. ROGERS: Your motion, it seems to me, would get us in a trap.

Mr. WOODRUFF: It seems to me so.

Mr. CAMPBELL: I made the motion that I did, judging from the remarks of the gentleman from Maine that there would be no difference of opinion in regard to it, but I am perfectly willing to adopt that part of the report preceding the resolutions and act on the latter separately.

Mr. WHEELER: It seems to me the question is not on the acceptance of this report. We have already accepted the report; it is before the Convention; it has been read, and it seems to me that any resolution accepting the report at this time is entirely out of order, because it is unnecessary.

Mr. FREEMAN: I beg to say to the gentleman last on the floor that we have simply received the report as presented; we have not accepted it, and it is not properly open for discussion until that motion is put.

Mr. WHEELER: I would like to ask the gentleman, if he receives a thing whether he does not accept it?

Mr. FREEMAN: Not exactly. This Convention does not accept it; it does not endorse it; it has not received the endorsement of a single member.

The CHAIRMAN: Not at all. The question is on the acceptance of the report.

The report was accepted.

The CHAIRMAN: Now, gentlemen, the report is before you for such action as you see fit to take.

Mr. WOODRUFF: Now, Mr. Chairman, I move the adoption of the resolutions recommended by the committee. That, I suppose, brings up the discussion of these resolutions.

The CHAIRMAN: The report, with the resolutions?

Mr. WOODRUFF: Yes, sir.

The CHAIRMAN: The motion, then, before the Convention is upon the adoption of this report, including the three resolutions reported. Does any one desire to be heard on that motion?

Mr. ROGERS: I desire only to say a very few words in regard to the second paragraph of these resolutions, and in the same line as the gentleman from Maine, without going into the question as to whether the Supreme Court, in the decision elaborately quoted in this report, has declared the question of fixing rates a judicial or administrative question; without determining or raising the question as to whether the court has declared that the legislature has the right to fix such rates without regard to any promises or covenants that the railroads may have made previous to their construction, or any invitation to put in their capital upon the ground that they would receive a certain income therefrom. It seems to me that inasmuch as there is doubt upon the interpretation of the true meaning of those expressions of the Supreme Court, it is hardly expedient for this Convention to give expression to its sense of the meaning of those decisions. I do not think it is necessary to go into an argument as to the advisability of a legislature having the right to fix rates of freight further than to say that it is the

opinion of a large number of people interested in railroad matters as to their regulation, and also interested in the securities of railroads, that it is a very dangerous thing for a railroad commission or even a legislature to have the absolute power—the conclusive power—of fixing rates without any appeal to a court. I think, therefore, that if any part of these resolutions are adopted it would be better to adopt the first paragraph and the third paragraph and omit the second.

The CHAIRMAN: Do you desire to make a motion to that effect, that the second of these resolutions be omitted?

Mr. ROGERS: The motion now, as I understand it, before the Convention is the adoption of the report and the resolutions. I will put mine in the form of an amendment by moving to adopt the report and the first and third resolutions, striking out the second.

Mr. MORTLAND: I wish to say one word further in explanation of my position. I see it is being somewhat embarrassed by my being on the committee. There are certain arguments running through the report that tend to a certain conclusion which I do not concur in. I do not agree with my learned friend as to the construction of the decision, so that I cannot vote for the resolution conscientiously nor for the reasoning that brings it to the surface. Therefore, when the question is put I wish the privilege of opposing it. While I concede that the government has the power, I have never been willing to concede that it is good policy to exercise that power in the fixing of rates by law, either national or state. I do not think it can be done, as I said before, so that it will be administered equitably and fairly. It is a great question, as we have been told by the Chairman this morning. It needs careful consideration. We do not care to come here and put ourselves on record and then be ashamed of it hereafter. Let us be careful in what we do. We come here to do something practical; not

to settle questions of law—the courts will take care of that—but to do something for the public benefit by some practical action that we may take in conference. That is, as I understand it, the main object of this Convention. So I merely wish to say that this might all be well enough, the reasoning might be good, the resolutions good, if all the railroads of the country were owned by one corporation or if the Government were to take charge of them, but with these diversified interests all over the country—diversified railroad interests—it is utterly impossible, I say, to fix any arbitrary rule that may be worked down from the great to the small. I wish, therefore, when this question is taken, to have the privilege of voting upon it, and I say I shall vote against the acceptance of the report and resolutions.

Mr. CROCKER: Mr. Chairman, I hope the Convention will not get snarled up on the question of the adoption of this report. It seems to me perfectly clear with reference to this matter that the only question is on the resolutions with which it closes. They are the motions of the committee, just the same as any individual makes a motion. The committee puts those motions before us for our consideration. They are backed up with arguments in writing which take just the same position before us as any argument any member might make in support of any motion he may have brought before the Convention. I trust, therefore, we shall not involve ourselves in difficulties by raising the question as to whether we are going to adopt the reasoning of the committee as set forth in this report. It makes no difference whether we arrive at conclusions by one set of reasons or another. We might not be able to support all the methods of reasoning which the members of committee have adopted, and yet we might agree with them in the conclusions at which they have arrived; and it seems to me, therefore, we shall very much simplify the proceedings in that respect, we shall understand what we are voting, upon and we shall get ahead very much faster, if we consider the three propositions which

the committee has submitted to us in the order in which they are given, acting upon each separately and beginning with the first.

Mr. KING: As a member of the committee I had the pleasure of sitting with Judge Fleming and talking in a general way, though rendering very little assistance in the preparation of this valuable report, and possibly I reflect the feelings of that committee—my own at least—when I say that I would not urge this matter upon the Convention at this time. We will not insist that the Convention vote at once upon the adoption of this report. As gentlemen have suggested, it is a very serious question; one that involves matters that are prodigious, and of such great importance that we do not expect them to be disposed of upon the spur of the moment; but in canvassing the question of what we want to do it seems to me that if we do anything at all, and if we feel that the time has come to act, we cannot afford to eliminate from these resolutions the second, because that is the very one that affects the authority, that affects the power, that affects the jurisdiction and the ability to act of the railroad commissioners of the country and of the Interstate Commerce Commission. I believe if there is one thing subject to criticism, if there is one thing subject to comment, if there is one thing that weakens and nullifies the action of the railroad commissioners of this country, it is the fact that when they undertake to act they find they have no power to act, as a rule; and if we are going to grapple with this question and deal with it at all there is no body of men so competent to act upon it as those who make it a study; no court is as competent to act upon the questions involved in the regulation of the railroads of this country as those who make it a special study; and if there is any fault to be found with the organization of these commissions it is that they are more or less political bodies and are not selected for their ability to deal with and manage these questions, the same as courts are organized

with men who are learned in the law; and if we are to make this action of any value to the country, that resolution should be adopted and let the responsibility rest somewhere. The railroads then will not say, as they say to the Interstate Commerce Commission, and as they say to all the commissions in the country, "Well, we do not have to obey you; we may fix up something, but we do not have to do it." Now, this is the real question, and I say, therefore, that we ought not to be in haste. I would not ask that these resolutions be voted on to-day; let them go over until to-morrow and give the gentlemen time to read them. We may have been mistaken. I think the conclusions arrived at by the chairman of this committee are entitled to a great deal of respect. They are the fruit of research. They are the fruit of study. They are the fruit not only of his brain, but of the accumulated information of the best men of this country, and I believe that the time has come when questions of this character must be met with a strong and steady hand.

Mr. HAGER: Do you make the motion that the report be made a special order for to-morrow?

Mr. KING: Yes; I move that it be made a special order for to-morrow at eleven o'clock.

The CHAIRMAN: If I may be allowed to make a suggestion in the same connection, would it not be well to put the matter in such a shape that we may know precisely to what we are to address our attention to-morrow? Now, the suggestion is made that the adoption of the report itself independent of these resolutions is unimportant, and that undoubtedly is true. Perhaps the gentleman who moved—

Mr. FLEMING: I hope the suggestion made by the gentleman from Massachusetts will be accepted without objection.

The CHAIRMAN: I was going to ask whether the mover would not accept that suggestion.

Mr. KING: I move that the report be made a special order for 11 o'clock to-morrow and that these resolutions be taken up one at a time.

The CHAIRMAN: If that meets with approval I will put it in that form; that this matter be made a special order of business at 11 o'clock to-morrow morning, and that at that time the resolutions be taken up in their order as reported by the committee and acted upon.

The motion was agreed to.

The CHAIRMAN: The next order of business is the report of the Committee on Uniformity of Railway Accounts.

REPORT OF COMMITTEE ON UNIFORMITY OF RAILWAY
ACCOUNTS.

Mr. SEYMOUR: The committee appointed at the Convention of Railroad Commissioners held in Washington, D. C., in May, 1890, to prepare and present a report upon "The question of perfecting the classification of operating expenses now used by the commissions," respectfully submits the following report:

A meeting attended by all the members of the committee was held at the office of the statistician of the Interstate Commission, in Washington, January 27, 1891, at which the executive committee of the Railway Accounting Association were present by invitation, and, at our request, suggested what changes should, in their judgment, be made in the present method of classifying operating expenses. The changes suggested by them were so much more radical than anything which we had contemplated that it was thought wise to submit them to the railroad commissioners of the several states and to the accounting departments of the various railroads, soliciting from them an expression of opinion as to the propriety of such changes, and thus ascertain whether any general dissatisfaction with the present form existed, from what quarter it proceeded, and what the rea-

sons for such dissatisfaction were. The suggested changes, with an explanatory circular, were sent out early in February, but replies have been received from less than one-tenth of the railroad companies and from only two state commissions, and those which have been received indicate a great variety of opinion as to the wisdom of the changes proposed. Some of the changes are approved by some of the companies and opposed by others, and some companies, representing a large mileage, are strongly opposed to any change whatever in the present method of classification, which they have so recently adopted at the request of the Interstate Commission. Some of the reports are accompanied with able and interesting arguments advocating and opposing the changes proposed, which we would be glad to submit to the Convention if the limits of this report permitted. Sufficient evidence, however, has not yet been received to enable us to make a final decision of this question, but the following expresses our views with the light we now have before us:

We must confess that we were, and still are, disinclined to make any material changes in the present method of classification—first, because, in our opinion, it is the best that has yet been devised or proposed, and, second, because frequent changes are to be deprecated as not conducive to uniformity in railway accounting and as impairing the usefulness of railway returns for comparative purposes. Many of the railroads have already so adjusted their system of accounting as to give the precise information required by the present form, and others will do so if any assurance can be given of its permanency, even though it may not in all respects meet their wishes. No form can be adopted that will be universally satisfactory. In our opinion it is unwise and inexpedient to require the railways of the country to incur the expense of frequently changing their classifications to conform to the requirements of the states and the General Government, unless it is for

the purpose of remedying some radical defects in the form which has been in use for the past three years. It is, however, claimed by the executive committee of the Railway Accounting Association that such radical defects do exist in the form now in use, leading to inaccurate and unreliable results, and that therefore a change in the form should now be made. The gentlemen composing this committee are expert accountants of eminent ability, and their opinion is entitled to the most respectful consideration of this Convention. The first change proposed by them is that taxes shall be included as a separate item in operating expenses. It will be observed that in the present form Operating Expenses are classified under four heads, viz :

Maintenance of Way and Structures.

Maintenance of Equipment.

Conducting Transportation.

General Expenses.

It is now suggested by the executive committee of the Accounting Association that Taxes shall constitute a fifth heading, and thus be classified as an operating expense rather than as a fixed charge to be deducted from the results of operation, as now treated. With all due deference to the opinion of those who advocate this change we are of the opinion that taxes are not legitimately an operating expense and should not be so classified, but should be treated, as in the present form, as a fixed charge, and, with other fixed charges, be deducted from the results of operation to produce the net income. This opinion of the committee is strengthened by the reports received from many of the railroads.

The second proposition of the executive committee is to discontinue the division of expenses between passenger and freight traffic and to abandon all efforts to ascertain the cost per passenger per mile of the passenger traffic and the cost per ton per mile of the freight traffic, because the results obtained are only approximate, unreliable, and misleading.

It is admitted and distinctly stated in the instructions accompanying the form of returns that the results obtained by the present method of apportionment are, and in the nature of the case must be, only approximate. It is difficult and perhaps impossible to determine just what proportion of the cost of maintenance of way and structures, which constitutes about twenty per cent. of the total operating expenses, is properly chargeable to passenger and freight traffic respectively, and the same is equally true of many of the items under each of the different heads of operating expenses. A very considerable per cent. of the total operating expenses can probably be definitely determined as properly chargeable either to passenger or freight traffic. We think, however, that the present apportionment, on a basis of train mileage, of those expenses which cannot be thus definitely determined, generally gives a close approximation to the actual cost; and, while we would cheerfully recommend the adoption of any method which would give a more accurate result, we are reluctant to advise the abandonment of all attempts to obtain the best information possible upon the subject. Furthermore, we believe that withholding from the public all information upon this subject is more likely to result in adverse and unjust legislation than to publish the best results obtainable, as is now done. In other words, legislation founded upon the best approximation to the truth which can be devised is less likely to be harmful to the railroads than that which is founded upon entire ignorance of the subject. Inasmuch, however, as the committee which had in charge the arrangement of the program for this Convention has assigned as a topic for special discussion the "Apportionment of Expenses to Freight and Passenger Traffic," your committee does not feel like making final recommendation on this subject. This question, therefore, may properly be regarded as in the hands of the Convention itself.

The third proposal of the committee is that in arriving at the cost per passenger per mile the expense for moving express and mails should be deducted from the expense of carrying on passenger traffic. With this recommendation your committee is in hearty sympathy, and would suggest that for the future, in making use of statistics for the purpose of arriving at the cost per passenger per mile, the expense for moving express and mails should in all cases be deducted from the total expense assigned to passenger traffic. The rule for making this deduction is a matter for further consideration.

The fourth recommendation of the committee consists in the suggestion that a considerable number of items heretofore classified under General Expenses be transferred to Conducting Transportation. With the spirit of this recommendation your committee is in general sympathy, but, as it is understood that the recommendations of the committee are, in their present shape, not satisfactory to the committee itself, it is recommended that this Convention take no final action upon the question involved at the present time.

Your committee, one member of which has served in this capacity for three successive years, listening with great interest and profit to the able discussions of the various features of the present form of returns, has arrived at the conclusion that what is most needed in that form is *permanency* rather than *change*.

In closing this report we desire to express our high appreciation of the valuable assistance rendered us in the discharge of our duties by the executive committee of the Railway Accounting Association, for which we are profoundly grateful.

WM. O. SEYMOUR.
ISAAC N. PHILLIPS.
ISAAC B. BROWN.

The CHAIRMAN: The report will be considered as accepted, if there is no objection. It is now before the Convention. I would inquire if representatives of the American Association of Railway Accounting Officers are present, and whether they would like to be heard at this time.

Mr. RIEBENACK: If it is in order I would like to make a few remarks with regard to that feature of the report which relates to the attempted division of expenses between freight and passenger business of railroads. I have given the subject considerable attention, and will only detain you a few moments to present what I think is the experience of all accounting officers.

I do not believe that anything new can be said in regard to the impracticability of arriving at reliable data for determining accurately the division of expenses between passenger and freight business in operating a railroad.

It has been a favorite idea with all the prominent lines in existence to arrive at some basis for so dividing their expenses, and the endeavor to accomplish this result has fully taxed the ingenuity and abilities of managers. The field has been well plowed and much seed sown, but the harvest has been barren, so far as any generally satisfactory conclusions are concerned.

In giving you some reasons for the cause of the failures, and in demonstrating the impracticability of attempting it in any manner so as to produce a basis universally applicable, I do not pretend to give any new thoughts, but merely to bring to your attention, in as plain a manner as possible, what has been attempted and what is being done, and to prove that the results reached are purely of local utility.

It is a recognized fact that only about 40 per cent. of the expenses of a railroad divide themselves naturally as between the two great sources of revenue—freight and passenger—leaving about 60 per cent. to be disposed of arbitrarily.

Five methods for accomplishing this have come to my knowledge, as follows :

First. Miles run by freight and passenger locomotives respectively.

Second. Miles run by freight and passenger trains respectively.

Third. Gross freight and passenger earnings respectively.

Fourth. Mileage of freight and passenger cars respectively.

Fifth. Freight tonnage mileage and passengers moved one mile.

With the first of these I am most familiar, as it has been the basis for the past twenty-five years on which the company with which I am connected has allotted its expenses common to both passenger and freight business and not wholly chargeable to either.

The respective mileage is taken of the freight and passenger locomotives hauling the trains, regardless of whether the cars are few or many, loaded or empty.

Mileage of locomotives running mixed trains is allotted between freight and passenger mileage on the basis of the mileage made by exclusively freight and passenger locomotives.

The road is divided into three grand divisions, and a separate record of freight and passenger locomotive mileage is kept for each grand division. Separate records are also kept for the various subdivisions and branches under each grand division.

The percentages vary each year, and instructions are issued annually of the percentages on which the expenses common to both freight and passenger traffic are to be divided, based upon the previous year's mileage. To show you how they

vary on the different divisions, take the line from New York to Pittsburgh, which is divided into four divisions, the first division from New York to Philadelphia; such expenses in 1890 were divided $\frac{1}{2}$ and $\frac{1}{2}$ each; from Philadelphia to Harrisburg, $\frac{7}{10}$ freight and $\frac{3}{10}$ passenger; Harrisburg to Altoona, $\frac{8}{10}$ freight and $\frac{2}{10}$ passenger; and Altoona to Pittsburgh, $\frac{7}{10}$ freight and $\frac{3}{10}$ passenger.

On the Philadelphia and Erie railroad the expenses of the entire three divisions are divided $\frac{8}{10}$ freight and $\frac{2}{10}$ passenger, it being principally a freight road.

On our Philadelphia, Wilmington and Baltimore railroad from Philadelphia to Baltimore the expenses are divided $\frac{4}{10}$ freight and $\frac{6}{10}$ passenger.

On the Camden and Atlantic railroad the passenger traffic largely predominates, the expenses being divided $\frac{2}{10}$ freight and $\frac{8}{10}$ passenger.

On the West Jersey railroad the expenses are divided $\frac{8}{10}$ freight and $\frac{2}{10}$ passenger.

This method is perfectly satisfactory to the officers of my company, and having been kept for so long a period it has added importance yearly as comparative information, measuring the efficiency of officers in operating, and producing economical administration; but it is clearly understood that it is not available in determining any policy affecting the making of rates, for the reason that the basis is arbitrary, without solid principles as a foundation, and serves our purposes only as a gauge to keep expenditures within established bounds.

The second basis, miles run by freight and passenger trains respectively, is the one laid down by the Interstate Commerce Commission, with the proviso that for mixed trains the assumed ratio be $\frac{2}{3}$ freight and $\frac{1}{3}$ passenger.

This basis is arrived at by the assumption that the heavier weight of the freight train is offset by the higher speed of the lighter passenger train. While such a rule might apply to a few roads it cannot be made applicable to all railroads,

as there is a wide difference between the relative weight of the freight and passenger trains to each other in different parts of the country.

All attempts made by railroad scientists in endeavoring to establish relative wear and tear of track and road-bed, as between the speed of fast express trains and the heavy weight of freight trains, have been clouded with doubts, and the various conditions of grade and location make any conclusions on one line of no value with another.

The third plan, dividing expenses in proportion to the gross freight and passenger earnings respectively, is no guide whatever, for the reason that in the same year either one of the classes of traffic may be affected by a reduction in rates that would lead to false conclusions, and be no guide for other years.

The fourth plan, division on the basis of mileage of freight and passenger cars respectively, has inequalities, as it assumes that the weight of freight and passenger cars is the same, while the fact is a passenger car weighs twice as much as a freight car.

The fifth theory, that carrying a passenger one mile is the same as carrying a ton of freight one mile, is merely an assumption, and is not warranted by anything approaching an equitable demonstration.

The cost per ton per mile as now reported is the general average for all classes of freight, obtained by dividing the tons one mile into what has been assumed to be the cost for its movement, while a moment's reflection will convince any one that the expense of handling the various classes must differ as widely as the rates charged. For instance, shipments from New York to Chicago in the six established classes vary from \$15.00 per ton to \$5.00. One line may carry principally high-grade freight, dry goods, boots and shoes, &c., and another low-grade freight, like lumber and ore. A general average of cost would therefore have no significance in deducing any conclusions—in fact, could only be misleading in most cases.

The cost per passenger per mile is still further from a fair basis. The passengers one mile are divided into the assumed passenger expenses, without any reference to the fact that the expenses for moving express, mails, and miscellaneous shipments, such as milk, marketing, &c., by passenger trains are included therein.

A low estimate places the cost of movement of mails and express business at about 70 per cent. of the receipts, to which should be added all incidental expenses connected with conducting the business of these two important sources of revenue.

Another disturbing element which would seriously affect results of cost of movement is the financial condition of a railroad. A prosperous company may decide to charge to its operating expenses work done on account of betterments, such as substituting stone bridges for iron or wooden ones, rebuilding equipment of engines and cars on more costly plans, replacing old stations with more expensive structures, which would greatly increase the cost of moving a ton of freight or a passenger per mile. Another company of equal financial strength may not include such items in operating expenses, but carry such expenditures direct to "income account" as "extraordinary expenses," while a third, whose reserve finances are not strong enough, would charge them to capital account.

It will be seen, therefore, that the attempts to show the average cost per mile of carrying a ton of freight or a passenger per mile leads us so deep into the field of conjecture as to make the thoughtful pause. When you consider that 60 per cent. of the expenses of railroads cannot be divided at all, as between freight and passenger, the results obtained by the following of any arbitrary rule for making such division of expenses cannot be sufficiently definite for practical purposes, and if used as facts for basing legislative action upon them must be unjust and injurious both to the public at large and investors in railroad property. The object of

all statistics is to obtain useful information as a guide to beneficial results, and no plan adopted should have any organic faults which may lead to misinformation and erroneous deductions.

Finally, is it so very desirable to have this information for arriving at general conclusions on which to base legal action? Is not the general result of the percentage of operating a safer and more reliable standard, for practical purposes, to judge by?

The statistics produced by the Interstate Commerce Commission from the reports of railroads are in most cases so thorough and complete, and their arrangement exhibits such great ability and a broad comprehension of what is desirable to be arrived at, that they may well serve as a model for the states to follow, but it is respectfully and impressively suggested that its valuable results should not be marred by any information that is based on assumption or theory and not demonstrable by clear and indisputable facts.

The CHAIRMAN: Shall we hear from any other member of that association?

Mr. WATERMAN: From the beginning of the legal requirement of railroads to report to the several states, and later to the General Government, the road with which I am connected has always with cheerfulness and heartiness undertaken to comply with the request. But there have been times, a good many of them, when, notwithstanding our best efforts and the exercise of a careful integrity, we have been absolutely unable to comply with the requests. I trust I may be understood when I say, *not unwilling*, but *unable* to comply.

For instance, if the company that I represent should instruct me to adopt a system of accounts which the Interstate Commerce Commission has now defined or now purposes to define, and our accounts should be opened for that purpose, we would then be unable to answer the questions which Commissioner Whitman requires of us for the State

of Michigan unless we opened also a complete and full set of accounts to answer him. If we opened an account to accommodate him we should then have to open a third and a fourth for the States of Ohio and Indiana, if we do thoroughly and well what is required of us.

In our suggestions which are filed here—that is, the suggestions of the executive committee of the Accounting Officers' Association—we were simply looking to an action, a united action, on the part of the commissioners, that ultimately might prove more practical and more satisfactory. I have in mind at this moment one railroad system which operates something over 11,000 miles, of whom it was recently stated by one of its officers that if the Interstate Commerce Commissioners and the state commissioners could adopt a form of accounts which would be thoroughly practical, that vast corporation would seriously consider the proposition of abandoning its present form of accounts and adopting instead that of the Government. I have been in hopes myself that the company I represent would ultimately be able to take similar action, so that I could cast aside our present form of accounts and open new ones that would meet fully, equitably, and justly all the requirements of the Interstate Commerce Commission and of the state commissioners of the several states through which our road runs, while also serving its own interests even better than at present.

It was therefore, as previously stated, looking to and hoping for this result, that the suggestions were offered by the accounting officers. I think, if you will carefully consider those suggestions, you will see that our object is not to induce the Interstate Commerce Commission to change its form. I think we appreciate fully the suggestion of Mr. Seymour, the chairman of the committee, that changes are inadvisable. All of us appreciate that as much as any one can, but if one change could be made that would come nearer to the present requirements and enable each of us to report what we cannot

now report, it would be highly desirable. We have given to you figures, but we had to work out those figures by special process; and it is true, as was stated by Dr. Adams only a few days ago in private conversation, that our accounts are not now kept so that they will lead up to the desired results. It has been hoped that we might adopt in some fair measure, more than at present, a system of accounts that would lead up to the information desired. If this can be done, and I certainly believe it can—for I am sure there is fairness, intelligence, justice, energy, perseverance, and purpose enough on the part of the Interstate Commerce Commission and of the several state commissioners and of the accounting officers, to confer together, and by kindly and thoughtful study agree upon a form or system of accounts that would be quite acceptable to the majority of railroads interested, while securing to the several governments the desired results—surely it is for the interest of all to do it.

I speak somewhat personally. I do not know that the managers of the company I represent would be willing to entertain a proposition to change our accounts, but I am sure of this: if a reasonable proposition were made that would accord justice to their interests and at the same time serve the interests of the several commissions, I think they would be much more likely to do so.

I wish that this report might be held over. If the Convention thinks well I would like to suggest that a committee be appointed to confer with a committee to be appointed by the Accounting Officers' Association at our annual meeting in May, and which joint committee could, some time between the first of June and next March, undertake to prepare a completed report of a form of accounts which might be adopted by such roads as desired to, preserving in every possible manner the present form, and making changes only where necessary.

Permit me a word further to express what I mean and why I make this suggestion. You have four headings:

Maintenance of Way and Structures, Maintenance of Equipment, Conducting Transportation, and General Expenses.

Now, it is presumable that whatever item does not go into any one of these accounts must go into some other one of them. It is presumable, also, that when you say Conducting Transportation you mean every item of expense that ought reasonably and rightly to make a part of that expense; and when you put into General Expenses an item which is not general expenses, but which is purely and wholly an expense of conducting transportation, it is manifestly incorrect. We offer these suggestions for corrections which do not in the main change the report, but only in its minor features, and permit the railroad companies to keep their accounts accurately, and thus furnish what is desired.

There are some other features of detail in the present form, especially in the classification of items, which, if you will observe, are very inaccurate—for instance, the list of items included in Repairs to Buildings and Fixtures. (I think of that one just at present.) It is safe to say that more than half of the articles named in that list are not chargeable to repairs of buildings and fixtures by any consideration whatever, and I do not think that there are three gentlemen on this floor who will for a moment say they are; and inasmuch as we have an account which is called Station Supplies we think that list of articles more properly belongs in that account.

Hence if you will look at the suggestions you will see that they are intended in the line of completeness and accuracy rather than that of radical change, except possibly in the matter of taxes, and if my friend Mr. Riebenack will permit me I will state that we suggested in our conference the additional item of taxes as a compromise. It was desired by some that it might be made a separate item, as shown by the report of the committee to-day. We therefore made a special item of it as a compromise only, not because we regard it as proper to be so placed.

I firmly believe that a joint committee representing

this body and the accounting officers would be able to compromise upon a report which would be satisfactory to all of the commissions, and would at the same time furnish to railroad companies a system of accounts which they could adopt in place of many now in use. If I may be understood, the object of my remarks is this: that in order to reply to the requests of the commissions such requests should be in forms that could be readily and truly answered, and railway accounts should be kept in such forms as to readily make the answers. This can never be accomplished under the present condition of things, and preserve integrity. There must be honest compromise, conference, and changes. When this has been done, in my humble judgment a system of accounts will be presented that will be acceptable to the majority of railways, so that those companies who are so disposed can adopt them; we shall then have little or no further occasion for changes, the commissioners will receive what they ask for, the railway accounts will provide the facts required, and truth—not error—will prevail.

Mr. WOODRUFF: Does your proposition carry with it the proposition of allowing the forms to remain as they are for the present year?

Mr. WATERMAN: Yes; I would suggest that no change whatever be made until a complete and satisfactory change can be agreed to.

Mr. S. M. WILLIAMS: I would like to second Mr. Waterman's proposition or suggestion that the discussion of this question be continued. The general adoption by the executive committee of the Association of Accounting Officers of the general classification as prescribed by the Interstate Commission at the present time shows that they acknowledge it as the best practical division that a thorough knowledge of railway accounting has yet suggested, and that, as he stated, some very large companies are disposed, if they feel there is any stability in the change, to surrender

a general division of operating accounts on which they have based their comparisons for a number of years. I only wish to state that this does not involve such great changes or so much labor as perhaps those who have listened to the argument without personally going into the details might suppose; in general the railway accountants and the commissioners and the Interstate Commission are in accord; they have arrived at the proper basis for reaching the results. It only needs a little more polishing, a little more division, the transfer of some few items that have got apparently into the wrong place, which they would like now to have righted, so that when righted we will be able to go on for the next fifteen or twenty years without suggesting any further changes.

For that reason I think that a further discussion of the subject between representatives of the commissioners and of the Interstate Commissioners and of the railroad accountants would be very desirable. And here, if I may be permitted, I would like to suggest that I hope the time will arrive when the state commissioners will feel disposed to adopt the forms of the Interstate Commission as their own and only ask in addition thereto such further information as they may need to complete their state statistics for purposes of taxation or other proper legislation. The labor and expense imposed on railroads to-day by the varied reports required can hardly be appreciated. I may say that nearly 33½ per cent. of the expense of railroad accounting to-day is chargeable to preparing statistics for purposes of reports to state and national governments, in addition to those deemed necessary for railroad management.

Mr. ROGERS: I would like to ask the gentleman one question. Do I understand that it is the purpose of the Accounting Officers' committee to strike taxes from special items to be deducted from the gross amount and insert them under operating expenses, and make them an item of operating expenses? What reason is there for doing that, inas-

much as this is wholly within the power of the managing officer to control?

Mr. RIEBENACK: There are taxes of various kinds, for instance, state taxes, which railroads treat differently. There are some taxes which are treated under operating expenses. Take, for instance, your machine shops, &c. They are properly charged to different expenses; but this is intended to show how heavily the roads are taxed, and that would be valuable information.

Mr. QUARRIER: I would like to ask this question: Are taxes not properly chargeable to operating expenses? The Supreme Court in two decisions has said that they are properly a part of operating expenses.

Mr. SEYMOUR: My attention has been called to that fact. The Supreme Court decided that taxes should be deducted from income to produce the net income, and that is now done in the present form.

Mr. QUARRIER: It, of course, comes from income, and hence should be included in operating expenses.

Mr. SEYMOUR: I mean to say in the opinion of the committee taxes should be retained as fixed charges.

Mr. QUARRIER: It was deducted from gross earnings and not net income.

The CHAIRMAN: Allow me to suggest that any question of that sort is not now before the Convention, and that this committee has not reported any change to be made up to the present time regarding this. The suggestion is that the matter be passed over at the present time.

Mr. HAGER: I move that the Committee on Uniformity in Annual Reports and Railway Accounting be continued, with authority to further confer with such committee as may be appointed by the executive committee of the Association of American Railway Accounting Officers, and to make re-

port on matters now under consideration by such committee at the next session of the Convention.

The CHAIRMAN: That is what the committee desires to have done.

Mr. SEYMOUR: We have no objection to that proposition.

The CHAIRMAN: The motion of Mr. Hager is that this committee be continued until the next session of the railroad commissioners, and that it be at liberty to confer with the Railroad Accounting Association and make a report at the next meeting, and that no change be made at this time.

Mr. SEYMOUR: We did recommend one change in the third item.

Mr. ROGERS: Was it not in the mail and express item?

Mr. SEYMOUR: It was thought that mail and express should be taken into the account for reckoning the cost of carrying one passenger one mile. We suggested that the charge should be made. We suggested also that some of the items under the head of General Expenses should be transferred to some definite account, for instance, Conducting Transportation. The number of accounts I cannot recall now. Superintendence was one of the new headings which was proposed by the committee. Taking some items now under General Expenses and putting them under some other headings we thought desirable.

Mr. WOODRUFF: Do they care very much about that?

Mr. SEYMOUR: No, sir.

Mr. WOODRUFF: They thought it very desirable to have these taken out of the classes.

The CHAIRMAN: The accounting officers endorsed that unanimously.

Mr. RICKARD: The idea is that it might avoid a revolution.

The CHAIRMAN: It seems to me that Mr. Hager's proposition is a very prudent one.

Mr. BROWN: All the members of that committee are, I believe, supposed to regard favorably the recommendations of the committee of accounting officers, because they recognize the fact that they are experts, but yet the wholesale change, they thought, would be received unfavorably by this Convention, and it was thought best to go slowly. At the same time they thought that some of the suggestions made must sooner or later be adopted, but until we have greater facilities for doing business the matter had best lie over. I think it is wise that the action of the companies should be left free for another year.

The CHAIRMAN: The motion is that this whole subject be left in the hands of the committee that has it in charge, with instructions to report at the next Convention, and that in the meantime the members confer with the Association of Railway Accounting Officers.

Mr. RIEBENACK: That carries with it a postponement?

The CHAIRMAN: Yes, sir.

The motion was agreed to.

The CHAIRMAN: Is there anything further before the Convention?

Mr. HAGER: I move we adjourn until 10 o'clock to-morrow morning.

The CHAIRMAN: Special business was fixed for 11 o'clock.

A MEMBER: Make it 10.30.

The amendment was rejected. The original motion was agreed to; and accordingly (at 4 o'clock and 45 minutes p. m.) the Convention adjourned.

SECOND DAY.

MARCH 4TH, 1891.

The Convention met pursuant to adjournment. Messrs. T. H. Benton and J. C. Allen, representing the Nebraska State Board of Transportation, appeared, and their names were entered upon the roll.

The CHAIRMAN: The Convention will come to order.

TERRITORIAL ASSIGNMENT OF STATISTICS.

Mr. WOODRUFF: I would state that Mr. Henry C. Adams, the Statistician of the Interstate Commerce Commission, has consented to come down and make a few introductory remarks with regard to the third subject in the order of business, which is the first subject for consideration this morning—Territorial Assignment of Statistics of Operation.

The CHAIRMAN: The Convention will be glad to hear from Mr. Adams, I have no doubt.

Mr. ADAMS: Mr. Woodruff spoke to me a few moments ago respecting this topic to be discussed—the Territorial Assignment of Statistics. I am not prepared, however, for a careful consideration of the subject, but can say a few words by way of introduction.

Of course we well know that there are two aims that statistics have in view. The first of these is to present a careful and accurate statement of the methods of conducting business and of all facts pertaining to any corporation or business investigated. The second of these aims is to summarize facts, to carefully classify them, and to compile them so as to arrive at some fair average. Now, it is in the interest of the second aim that a territorial assignment of statistics, or some other method of classification, is urged. The necessity

of this is, I think, beyond question. In connection with the Census Office, as also in connection with the Interstate Commerce Commission, the country has already been divided into ten groups and districts for the presentation of railway statistics. There came from the printing office this morning the first proof of a bulletin giving railway statistics for the New England States, for each of the ten years making up the last decade, and some of the facts are so interesting in their bearing upon this subject that I venture to call them to your notice. The lesson to be learned from these facts is, I think, that the conditions under which New England railways are operated are so different from the conditions under which other railways are operated that the same rules for control would not apply in the one division as in the other. Here is a table, for example, which assigns equipment to the length of line operated. In this table, for the year 1889, for the New England States, we have engines per 100 miles of line, 33; whereas for the United States, as a whole, for the same year, we have but 19 engines. The freight engines are about the same per 100 miles of line in the New England States, and in the United States as a whole, while passenger engines per 100 miles of line are 16 in New England and but 5 in the country outside of New England. Another illustration is that passengers carried per passenger engine in New England are 102,000, whereas passengers carried per passenger engine outside of New England are 58,000, a little more than one-half. Passenger mileage per passenger engine in New England, however, is about the same as in other parts of the country. Comparisons of this sort, I would say, suggest the conditions under which railways are operated. Now, it is altogether likely that when statistics are compiled for the other territorial divisions there will be found differences as marked as those already mentioned, and if it be true that railway problems should be settled in a scientific manner—that is to say, on the basis of the facts—it follows as a matter of course that there should be a classification of statistics.

It appears to me that the question of the proper territorial assignment of statistics is a question that claims the attention of the western rather than of the eastern states, because it is not until you get into the country that lies west of the city of Chicago that you find the lines of such length, and their operating accounts kept in such a manner, that it is difficult to secure a proper territorial assignment of statistics. But in a good many of the western states the statistics are collated on the basis of state lines. Now, I should be very much interested to know from the representatives of those states how those statistics are gotten at. Are they assigned upon the basis of mileage? If assigned upon the basis of mileage is that assignment a sound assignment? Is it correct? Are the facts published by certain of the states pertaining to traffic within state lines reliable?

Mr. Chairman, if it is thought best to press this matter farther and appoint a committee, it is questions of this sort that should be considered; and also the further question which is the problem involved, viz., what rule should be laid down and what requirement should be imposed upon the accounting officers of the railways so as to obtain these localized statistics and obtain them accurately.

Mr. WOODRUFF: Mr. Chairman, without designing, of course, to cut off any discussion at the present time, I would say that the Committee on Order of Business suggests that this matter be referred to a committee of five, to be appointed by the Chair in the usual manner, to prepare and submit a report at the next session.

The CHAIRMAN: You will make that a part of your report, I presume, when you report on the order of business for the next session. Perhaps it will not be necessary, then, to take any further action with respect to it now.

Mr. WOODRUFF: Just at this moment, if there is nothing pending, the Committee on Order of Business wishes to make this motion: That the present officers of this Convention

be continued in office until the next Convention. It has been thought that it certainly would be advantageous that the Secretary should be continued, and that it would be well to continue all the officers until the next meeting; and I make that motion from our committee.

The CHAIRMAN: I suppose all of the offices except that of the Secretary and Assistant Secretary would be sinecures, but the Secretary always has something to do during the vacation. It is therefore important, so far as that office is concerned, it seems to me, that it should be continued. If you think it important with respect to the others, I will put the motion that you have made.

The motion was agreed to.

The CHAIRMAN: The hour for the special business assigned has not yet arrived. The motion to give the Committee on Railway Legislation leave to sit again, the understanding being that it will report at the meeting a year hence, was the matter that was before the Convention previous to that which was before us at the adjournment, and can be taken up now if the Convention is ready for it.

REPORT OF COMMITTEE ON RAILWAY LEGISLATION.

Mr. CROCKER: Mr. Chairman, I understand you have called up the report of the Committee on Railway Legislation. I desire to state that one of the members of that committee, Mr. John T. Rich, of Michigan, is not now a railroad commissioner. There are in fact only two members of that committee present at this Convention, and the attempt to have a meeting of the committee prior to the meeting of this Convention therefore failed. For that reason, among others, the committee did not make a final report. The chairman had hoped to have a meeting the night before the Convention met, but only two members were present—Mr. Woodruff and myself. I would suggest that the vacancy in the committee be filled.

The CHAIRMAN: If there is no objection to that I suppose it would, perhaps, be expected that the Chair should fill that vacancy, as the committee was originally appointed by the Chair by direction of the Convention. I would say that it has seemed desirable that there should be a representative on that committee from the Interstate Commerce Commission; and, as a vacancy has now occurred, I have consulted with Col. Morrison, of our Commission, on the question of his going upon the committee.

Under ordinary circumstances, of course, I should not ask Col. Morrison to take a position on one of these committees without being made chairman of it—without his being named first in the appointment.

Mr. CROCKER: Mr. Chairman, I should like to have Col. Morrison made chairman of the committee.

The CHAIRMAN: Col. Morrison has expressed his willingness to take a place on this committee in place of Mr. Rich of Michigan, but he has at the same time said his choice would be not to be made its chairman. He thinks the committee has an excellent chairman now and one who can devote more time and attention to these matters than he can. Col. Morrison is overcrowded with duties pertaining to the office of commissioner. While, therefore, he would consent to go upon this committee, if thought desirable, he makes the special request that he be not made chairman, but that Mr. Crocker be retained in the position in which he has already performed valuable service. I will therefore name the committee as it stands, with Col. Morrison on it. It is as follows:

GEORGE G. CROCKER, of Massachusetts.

WILLIAM R. MORRISON, of the Interstate Commerce Commission.

W. S. GARBER, of Nebraska.

HENRY R. SHORTER, of Alabama.

SAMUEL E. PINGREE, of Vermont.

GEORGE M. WOODRUFF, of Connecticut.

In making up the committee Commissioner Morrison is named second for such contingencies as may possibly occur.

Will the Convention now dispose of the questions raised upon the report of this committee? The motion is that this committee have leave to sit again and report at a future time.

Mr. CROCKER: Mr. Chairman, as to some of the other members of that committee I do not know whether they will serve or not. I would therefore suggest—not at this time, however, but as a motion to be acted upon later—that in case vacancies occur on any of the committees the Chairman of this Convention, on being notified thereof, may fill such vacancies.

The CHAIRMAN: You make that as a motion?

Mr. CROCKER: I suppose it is not strictly in order until the other motion is disposed of.

The CHAIRMAN: Is there anything further to be said upon the motion that has been made to give this committee leave to sit again and report in the future? If not, perhaps we may as well put the motion now.

The motion was agreed to.

Mr. CROCKER: Mr. Chairman, I now move that the permanent Chairman of this Convention be authorized to fill any vacancies which may occur in any of the committees.

The CHAIRMAN: Between the time of their appointment and the next meeting?

Mr. CROCKER: Yes, sir; the next annual meeting.

The CHAIRMAN: Is there anything to be said on that motion?

The motion was agreed to.

Mr. WOODRUFF: Mr. Chairman, it being so near 11 o'clock, I move to take up the regular order of business.

The CHAIRMAN: Very well.

REPORT OF COMMITTEE ON REASONABLE RATES.

Mr. FLEMING: If I may be pardoned one moment, I want to offer to amend the resolutions offered by the committee. There seems to be some misapprehension in the minds of some members of the Convention which I wish to remove before you begin this discussion.

The CHAIRMAN: The Convention will understand that the special order for this morning is a consideration of the three resolutions, which are found on pages 73 and 74 of the report of the proceedings of yesterday, as reported by the Committee on Reasonable Rates.

Mr. FLEMING: I want to remove an impression which seems to be in the minds of some members and which, I take it, is clearly a misapprehension of this report. With a view of clearing up that misapprehension, I want to say that we have not stated in our report *that it is expedient* to regulate railways by commissions. We have simply asserted that it is within the power of the state—that is, of the Federal Government, in so far as interstate matters are concerned, and of the state, so far as internal commerce is concerned—that it is within their power to do this thing. We have not undertaken to say in this report what is expedient as to the exercise of that power at all. With a view of making that clear, I will, on the part of the committee, move an amendment to the resolutions referred to, and I hope no objection will be offered. I move to strike out from the second resolution the words “and schedules of rates fixed by them,” and also strike out the words “of a master commissioner in chancery in United States courts, as the verdict of a jury, or as the valuations of a tax assessor in matters of ad valorem assessments of property,” and to substitute in place of these latter the words “other administrative officers.”

The CHAIRMAN : Your amendment refers to the second resolution.

Mr. FLEMING : Yes, sir ; so that the resolution would read as follows :

That it is within the power of Congress and the state legislatures to delegate the power of a reasonable regulation of rates to boards of commissioners and to make their acts and findings upon questions of fact, after fair legal opportunity to be heard, as conclusive and binding upon the courts as the findings and acts of other administrative officers.

The CHAIRMAN : The first question arises, as I understand it, upon the first resolution. Is the Convention ready for the question upon the first resolution, which is as follows :

That it is competent for the Congress of the United States and for the legislatures of the various states to regulate, within their respective spheres, the rates of freight and passenger traffic and travel, subject only to those legal and constitutional limitations which, under our system of government, circumscribe the exercise of all legislative and administrative acts.

The resolution was unanimously agreed to.

The CHAIRMAN : Now Mr. Fleming moves that the second resolution be amended so that it will read as follows :

That it is within the power of Congress and the state legislatures to delegate the power of reasonable regulation of rates to boards of commissioners, and to make their acts and findings upon questions of fact, after fair legal opportunity to be heard, as conclusive and binding as the findings and acts of other administrative officers.

Mr. MORTLAND : I offer the following as a substitute for the second and third resolutions :

That it is within the power of Congress and of state legislatures to delegate to boards of commissioners the power to determine what are and what are not reasonable rates and charges, and we believe it would be wise to provide by law that reports of such commissioners, after notice

and hearings upon all questions of fact arising in such matters, should be held to be *prima facie* proof of matters therein stated, and we believe that uniformity in Congressional and state legislation as to rates is desirable, to the end that practical results may be attained by the co-operation between State and Interstate Commissioners.

I do not object so much to the resolution as amended, but in order to have the thing fully before the Convention I offer the substitute.

Mr. FLEMING: Have you any objection to the amendment I have proposed being acted upon and then have yours put as a substitute?

Mr. MORTLAND: I do not see how that can be done, because if the resolution as amended were adopted the substitute would not be in order.

The CHAIRMAN: It would not be adopted, and your substitute could come in as well after the vote on the amendment as it can now.

Mr. FREEMAN: If this substitute is received at all by the Chair it must be as an amendment to the amendment. It cannot be received in any other way. If the gentleman withdraws his substitute, then the vote can be taken on the amendment.

Mr. WOODRUFF: It is distinctly understood that this motion can come in as a substitute after we have voted on the amendment, and by common consent it can be received in that way.

The CHAIRMAN: The Chair is of opinion that the question can be taken now upon the amendment to the second resolution.

The question on the amendment was put and the Chair was unable to decide.

The yeas and nays were ordered.

Mr. LUKE: If it is in order before proceeding with the

amendment offered by Judge Fleming, I would like to offer an amendment to his amendment to this effect.

The CHAIRMAN: The vote is being taken upon the amendment.

Mr. WOODRUFF: I may as well rise to the point of order that this amendment is not now in order, because the vote is being taken.

The CHAIRMAN: The point of order is well taken; the call of the roll will be proceeded with.

The Secretary proceeded to call the roll, which resulted as follows: Yeas, 16; nays, 16.

The CHAIRMAN: Well, I vote yea.

Mr. MORRISON: I do not see that there is so much difference in these propositions, but I think the committee represented by Mr. Fleming has a right to correct and amend its own report before anything else is done.

The result was announced—yeas, 17, nays, 16—as follows:

YEAS—17.

Woodruff.	Brunswick.	Brown.
Seymour.	Crocker.	Hill.
Himes.	Rogers.	Morrison.
Wheeler.	Rickard.	Bragg.
Crim.	Stewart.	Knapp.
Hager.		

The Chairman votes yea.

NAYS—16.

Campbell.	Walsh.	King.
Smith (Iowa).	Slotten.	Bagley.
Mortland.	Smith (Ohio).	Watson.
Williams.	Freeman.	Thompson.
Liggett.	Duncan.	Teisberg.
Jervey.		

So the amendment was agreed to.

The CHAIRMAN: The question recurs upon the resolution. Is there any further suggestion or amendment?

Mr. FLEMING: I would like to ask a question for information. I understand that the amendment of the committee has been adopted. Will that interfere with an amendment to some other part, or an additional resolution making some provision with regard to the question of schedules?

The CHAIRMAN: I do not understand that it precludes the offering of other propositions. If some gentleman wants to take another step and extend the matter, as contemplated by the original resolutions, that can still be done. It would be very well to act upon the resolution as amended, and then we can decide what we will do with the other proposition.

Mr. MORRISON: How much difference is there between these two propositions of Judge Fleming and Mr. Mortland?

Mr. FLEMING: I do not think there is very much, but some gentlemen seem to think that there is a material difference, and I want them to understand that they are not precluded from amending the resolution by the vote just passed or from discussing the question whether it is desirable to adopt any other, so as to meet their particular views.

Mr. WOODRUFF: The substitute, as I understand it, was prepared before the amendment was made. There is very little difference between the amendment and the substitute, and I would ask if the mover desires to press the substitute now.

Mr. MORTLAND: I should prefer to let the matter go to a vote.

Mr. WALSH: It strikes me that the substitute ought to come up now.

The CHAIRMAN: Do I understand that the substitute has been withdrawn?

Mr. CAMPBELL: We object to its withdrawal. It is now the property of the Convention and we object to having it withdrawn.

The question was put on the substitute, and the Chair was unable to decide. The yeas and nays were ordered, and the Secretary proceeded to call the roll.

The result was announced—yeas 11, nays 17—as follows:

YEAS—11.

Mortland.	Walsh.	Duncan.
Williams.	Slotten.	Jervy.
Liggett.	Smith (Ohio).	Thompson.
Teisberg.	Freeman.	

NAYS—17.

Woodruff.	Fleming.	Brown.
Seymour.	Hager.	King.
Wheeler.	Brunswick.	Davison.
Crim.	Rogers.	Watson.
Campbell.	Rickard.	Hill.
Smith (Iowa).	Stewart.	

So the substitute was rejected.

The CHAIRMAN: The question now recurs upon the second resolution as amended.

Mr. HILL: Will you please have it read as amended?

The Secretary read as follows:

That it is within the power of Congress and the state legislatures to delegate the power of reasonable regulation of rates to boards of commissioners, and to make their acts and findings upon questions of fact, after fair legal opportunity to be heard, as conclusive and binding as the findings and acts of other administrative officers.

The CHAIRMAN: Are you ready for the question upon this resolution as amended?

Mr. MORTLAND: I call for the yeas and nays.

The yeas and nays were ordered, and the Secretary pro-

ceeded to call the roll. The result was announced—yeas 24, nays 7—as follows:

YEAS—24.

Woodruff.	Fleming.	Brown.
Seymour.	Hager.	Duncan.
Himes.	Brunswick.	Jervey.
Wheeler.	Crocker.	King.
Crim.	Whitman.	Bagley.
Luke.	Rickard.	Watson.
Campbell.	Smith (Ohio).	Hill.
Smith (Iowa).	Stewart.	Rogers.

NAYS—7.

Mortland.	Slotten.	Teisberg.
Williams.	Thompson.	Davison.
Liggett.		

So the resolution was agreed to.

The CHAIRMAN: The question now is upon the third resolution:

That uniformity is desirable in Congressional and state legislation on the subject of rates, to the end that public regulation of rates may be practically reached by the active co-operation between State and Interstate Commissions.

The resolution was unanimously agreed to.

The CHAIRMAN: That, I believe, concludes the special order for the morning.

Mr. WOODRUFF: The Committee on Order of Business would suggest the next topic in order, which is Safety Appliances for Railroad Cars.

SAFETY APPLIANCES FOR RAILROAD CARS.

The CHAIRMAN: The subject now before the Convention is that of Safety Appliances for Railroad Cars.

Mr. CROCKER: Mr. Chairman, the Convention is aware that this subject was considerably discussed at the last

meeting and a resolution was passed recommending Congressional action. Another year has elapsed and nothing has been done by Congress, nor has there been any great progress made toward uniformity in the matter of couplers. The present lack of uniformity is daily claiming its victims, and it does seem to me that we ought not to let the subject drop at this Convention; that we ought to take some action in furtherance of the effort which was made last year.

I have prepared a draft of a resolution upon the subject, and I will submit it, as it seems to me that this, at least, we should do. Whether we should do more or not will depend upon the suggestions of other members. The resolution is as follows:

That a committee of five be appointed by the Chair to urge upon Congress, as soon as possible after the opening of its next regular session, the imperative need for action by that body calculated to hasten and insure the equipment of freight cars throughout the country with uniform automatic couplers and with train brakes.

The CHAIRMAN: The Convention has heard the proposed resolution. Is there anything to be said upon it?

Mr. SMITH (Iowa): In this connection I desire to offer some resolution for the consideration of the Convention, and to direct its attention to the fact that in this resolution is raised a question as to the type of couplers.

The CHAIRMAN: Is this intended as a substitute for the other resolution?

Mr. SMITH (Iowa): It is an additional resolution.

It will be remembered that in the discussion of this question a year ago it was urged by some of the gentlemen present that it was not the proper thing for the Convention to specify the particular type of coupler that should be adopted, but that it was proper to leave that question to the operating departments of the respective railway lines, whose

officers and managers, no doubt, were better equipped to settle that question than the Convention.

And I desire to call the attention of the Convention in advance to this question, which occurs in the resolutions I am about to offer. The resolutions are as follows:

Resolved, That, with a year's added experience and observation, we hereby reaffirm substantially the resolutions adopted last year by this Convention relating to automatic couplers and power brakes, excepting, however, the indorsement of any particular type of coupler.

Resolved, That it is the unanimous sentiment of this Convention that the necessary legislation, both national and state, be promptly enacted providing for the gradual application and use of automatic couplers and power brakes on freight cars and driving-wheel brakes on locomotives, and also providing for the early extermination of the common car stove.

Resolved, That a committee of — members, to be selected by the Chairman, with ex-Commissioner L. S. Coffin as vice-chairman, be constituted to direct the attention of Congress and the legislatures of the several states to this matter; that the committee be continued until the next session, with power to act, and that the duly accredited representatives of different associations interested in this question be invited to co-operate with the committee.

The CHAIRMAN: These, I suppose, are really intended as a substitute, are they not? Do they not cover the ground of the resolution first offered?

Mr. SMITH (Iowa): They may be termed a substitute.

The CHAIRMAN: They substantially cover the ground and go further than Mr. Crocker's. I should suppose that they were a substitute.

Mr. ROGERS: The substance of the resolution offered by Mr. Crocker, as I understood it at the time of the reading, was that a committee of five be appointed by the Chair to urge upon Congress, as soon as possible after the opening of its next regular session, the imperative need for action

by that body calculated to hasten and insure the equipment of freight cars throughout the country with uniform automatic couplers and train brakes.

So far as the resolution provides for the appointment of a committee I am heartily in favor of it. But it seems to me that the time has come to define the type of coupler that should be recommended in the bill; otherwise you will throw into chaos and still further confusion this whole subject.

Let us review for a moment the action heretofore taken upon this subject of couplers. I take my own State first because I am more familiar with it. An act was passed some five or six years ago providing that after 1884 no new car should be purchased nor any old car be repaired without being equipped with an automatic coupler. Massachusetts had such a law upon its statute books and so did other states. In order to determine some form of coupler that would bring about uniformity, an elaborate investigation of the subject was gone into by the Board of Railroad Commissioners of our State. We had a test at East Albany. Inventors from all over the country were invited to attend and present their inventions applied to cars, so that practical demonstration could be made of their efficiency. After spending two days in practically testing these couplers, as to whether they would couple on curves and as to their strength and freedom from being fouled by rust and water and all that sort of thing, we reached certain conclusions and recommended as our first choice a form not of the vertical plane type.

Well, matters went along, and the legislature amended this law with regard to coupling, providing that after November, 1892—I think that is the month; I know it is the year—every freight car operated within the State of New York and owned by domestic corporations should be equipped with an automatic coupler, but not defining the type. Then the Master Car Builders' Association, or the corporations through the Master Car Builders'

Association, presumably representing the best intelligence and the best experience upon this subject, decided upon a type known as the vertical plane type. It did not seem to me the best type to be used, but any type is better than the discordant couplers in use all over the country.

Now, what is the status? The status is that this Master Car Builders' Association have accepted and recommended this type. It has been accepted. I see by reading the reports of the last Convention, that some gentleman here read that a resolution of the presidents of the railroads constituting what is known as the Vanderbilt system accepted this type. They certainly did not do it without knowledge of the merits of this type of coupler. The Pennsylvania Railroad Company, with all its affiliated lines, has, as I understand, accepted this type. That certainly gives this type a weight which cannot be lightly discarded. Now, then, such being the case, it seems to me that to appoint a committee to urge upon Congress the passage of a law to insure the adoption of an automatic coupler would be futile unless it is coupled with a recommendation of the kind of coupler to be adopted. I therefore would suggest as a substitute for both of these resolutions the following :

Resolved, That the recommendation of the Railroad Commissioners of the United States, in Convention assembled in May, 1890, that driving-wheel brakes and apparatus for train brakes be placed on every locomotive, and that train brakes and uniform automatic couplers be placed on every freight car, be reaffirmed as the sense of this Convention.

2. That the Chairman appoint a committee of five to draft a bill to be submitted to Congress to secure the above results.

3. That this committee be instructed to present the bill to the next Congress and to secure its passage by the use of every legitimate means.

The reasons that I have expressed are my reasons for advocating this measure. I do not care a straw what type of coupler is adopted, provided only it shall be uniform ; but I

think the time has come when we should declare that under all the circumstances this is our choice, or that we do approve of this coupler that has been adopted by these railroad experts.

Mr. KING: I would like to ask the gentleman if there are not several forms of the Master Car Builders' coupler.

Mr. ROGERS: Yes, sir; there are several. They provide certain lines so that those of the vertical type will be interchangeable, and if the couplers do not conform to those lines they do not belong to the Master Car Builders' type.

The CHAIRMAN: I understand your resolution is intended as a substitute for both the others.

Mr. HILL: It is a substitute for the substitute offered by the gentleman from Iowa.

This, Mr. Chairman, is one of the most important questions that we can be called upon to deal with. It is a matter that has excited very great interest, and claimed the attention of the best minds connected with the railway service in this country. But first of all I desire to say that, after considerable experience with state legislation on this subject and kindred subjects, in my opinion nothing can be gained by attempting to control this matter by state legislation.

I may say just here that of the three propositions before us I decidedly prefer the proposition submitted by the gentleman from Iowa. I really have no objection to his substitute except the suggestion of a particular name for appointment on this committee. However, the proposition submitted by the gentleman from New York confines us to a particular type of coupler. He has given some very good reasons for adopting the coupler prescribed by the Master Car Builders' Association. But all over the country progress has been made in this direction. Take it in the states south of the Potomac and south of the Ohio and east of the Mississippi. Nearly 11,000 miles of railway in that part of the country are controlled by one corpora-

tion—The Richmond and West Point Terminal Company—comprising nearly all of the railways south of the Potomac, south of the Ohio, and east of the Mississippi. Now, the Richmond and Danville road, with which I am perfectly familiar, for several years past has not had a car built or repaired without being equipped with an automatic coupler. You will find on every such car of the Terminal system an air-brake and automatic coupler, and the coupler used is the Janney coupler. Now, I know little or nothing about couplers, but I see nothing but the Janney coupler all over the southern country. These companies have gone to a great deal of expense in equipping their cars. I am not prepared to express any opinion as to the particular sort of coupler, but I do not think it is quite the thing for us to do to say to these people all over this country, You shall use one particular sort of coupler.

Mr. ROGERS: May I interrupt you for a moment? How, under heaven, then, is uniformity to be secured? We have been attempting to get uniformity for eight years, with very little progress.

Mr. HILL: I do not think that we are the best judges as to which is the best coupler to be used.

Mr. ROGERS: We are not; we are accepting expert opinion.

Mr. HILL: I have seen in every railroad meeting I have attended in the last five years somebody with the best coupler in existence. You find him wherever you go. After years of study I am not prepared to say which is the best, and I doubt very much whether the gentleman is.

Mr. ROGERS: I disclaim any opinion on the subject. If they will only adopt one I will be satisfied.

Mr. HILL: I do not propose to say here that the Master Car Builders' coupler is the best, because I do not know it. I know scarcely anything about it. I desire that action of the strongest kind, action that it is proper for us to take, should be taken to secure legislation in Congress. I have

had a great deal of experience in state legislation as to railroads, particularly in the south, and I say now that in the south you can scarcely get anything done. I trust that the resolutions of the gentleman from Iowa, with the name of Mr. Coffin stricken out, will be adopted.

Mr. SMITH (Iowa): By way of explanation, with reference to the resolution that I presented, I desire to say that I do not insist upon the name of Mr. Coffin being retained as a member of that committee. I simply inserted his name for the reason that he is the representative—the authorized representative—of the Brakemen's Association of the United States, and, of course, by reason of that relation to the association, would take a double interest in this question, and could help materially in the work, already far along, of urging upon the legislatures of the states and the Congress of the United States prompt action on this question. I would say that so far as the state legislatures are concerned the State I have the honor to represent, at the last session of its legislature, passed a bill which provided for the gradual adoption, upon freight cars and upon locomotives, of safety appliances, taking the broad ground that it was unwise to specify any particular appliance, for the reasons that have already been stated here. Our law was enacted on the broad ground of leaving to the roads the selection of the particular kind of appliance, simply providing that it should be automatic. This was done for another reason, Mr. Chairman. It is probably well known to all of you that carriers are liable for accidents that result from the use of improper appliances, and they are placed upon their own responsibility as to the selection of these appliances; but if the State or the National Government steps in and says to the railway company, You must use this particular form of coupler or brake; and an accident results from the use of that form, it occurs to me that the responsibility of that accident is transferred from the shoulders of the railway company and falls upon the shoulders of those who order the adoption of these appli-

ances; and that is a responsibility that I, as a commissioner, do not care to assume. For myself, I am unwilling that the carriers should have that responsibility lifted from them by being placed in such a situation. As I understand the situation, a type of coupler was adopted by the Master Car Builders' Association some few years ago, but practical trials or tests of it have not proved satisfactory. Another association, which has probably more to do with couplers than any other in either the United States or Canada, namely, the National Car Switchmen's Association of the United States and Canada, at a meeting held last fall, declared by resolution that they did not approve of the Master Car Builders' type. These men are as well qualified to judge of their practicability as we are—presumably better qualified than we are to judge of these matters—and it occurs to me, Mr. Chairman that if we attempt to sort out from among the 6,000 couplers one particular kind, and say that this must be adopted, we are retarding rather than promoting this matter. But if it is not thought desirable by this Convention, Mr. Chairman, to have Mr. Coffin's name in this resolution, I shall be glad to have it stricken out.

Mr. ROGERS: It seems to me that it is not feasible or reasonable to disclaim a desire to approve of any one type of coupler. It may be said that the better plan is to leave it to the railroad companies. But what is the practical effect of that? Why, it is to make confusion worse confounded. We have already statutes on the statute books of two-thirds of the states of the Union requiring that railway cars shall be equipped with automatic couplers. But what use are they if we cannot say what kind of coupler? I am charged with carrying this law into effect, but I do not know what to do in the matter of making a selection. I want somebody to tell me what kind of coupler shall be taken up, and I will adopt the suggestion if I think it is right. You call upon Congress to pass an act requiring cars to be equipped with a particular kind of coupler, but if you go to the Patent

Office you will find 6,000 types to choose from. No progress would be made by having a bill passed merely requiring cars to be equipped with an automatic coupler unless the particular kind is defined.

Mr. WOODRUFF: The Committee on Order of Business has had several communications handed to it on this general subject. A portion of them it will request to have referred to whatever committees are affected. In addition to that, the Switchmen's Mutual Association of North America has sent a representative here, Mr. George E. Starbird, who desires to be heard, not in advocacy of any particular patent, but in regard to what action ought to be taken on this general subject.

Mr. ROGERS: What are his credentials?

Mr. WOODRUFF: I will read them:

SWITCHMEN'S MUTUAL AID ASSOCIATION OF NORTH AMERICA.

OFFICE OF THE GRAND LODGE,
ROOMS 77 AND 78, COMMERCE BUILDING,
CHICAGO, ILL., *March 1, 1891.*

INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

GENTLEMEN: The bearer is Mr. Geo. E. Starbird, who is master of one of the subordinate lodges of this association, and on the question which he desires to call to your attention I am satisfied that he is well qualified to speak.

The question of appointing a committee to confer with your honorable body has often been discussed, but never acted upon. I do believe, however, that such a committee as Mr. Starbird will suggest would be of great service to all parties concerned.

Respectfully yours,
[SEAL.]

JOHN A. HALL,
Ed. Switchmen's Journal.

His certificate of membership from the association is one of his credentials, and we ask that he be heard for a few moments.

The CHAIRMAN: There is no objection to the gentleman being heard.

Mr. STARBIRD: Mr. Chairman and gentlemen of the Convention, it is with a sort of hesitancy that I come before you to speak upon this important matter. In fact, I may say I was called upon at a moment's notice to do so, and I can only speak from having an experience of twenty-three years' service, and as a member of the Switchmen's Mutual Aid Association. I will say, Mr. Chairman, that I am not here to represent any particular form of coupler, nor to favor any particular type. I am a switchman, and am at present employed by the Chicago, Milwaukee and St. Paul railway, and in active service, but I am here to present this matter before you, for your attention, from a practical standpoint. Our suggestion, not to detain your body, covers about the proposition you have made, that a committee be selected from the Master Car Builders' Association, Master Mechanics' Association, Switchmen's Mutual Aid Association of North America, Brotherhood of Railway Trainmen, Car Inspectors' Association, etc., and as many of your capable body as you deem fit, and have them meet and take up this question of couplers, and go into all its details, and report to your committee all of their views on the subject, and then have that report submitted to Congress and have it become a law. That is the solution of the whole question. As to the Buffalo case, I beg leave to state that we did not endorse any one coupler, for, as I believe—and we hold entirely the same view—there are hundreds of couplers which we have to contend with in all sorts of weather. We have no standard type of coupler—that is, the switchmen have no standard type of coupler.

We are not financially interested as patentees. No member of my organization, I know, has any interest in any way, shape, or form in any type of coupler; but we are financially interested in the organization which I am proud to be a member of, a mutual benevolent association. I can show

you, by a sheet I have, where we pay thousands of dollars monthly for the benefit of our widows and orphans, and these various types of couplers that we have to contend with are largely increasing the amount drawn from our salaries to keep up our insurance.

From a humanitarian standpoint I would like to draw a picture for you to look at. It is very well for a patentee to bring couplers and models here before you, where everything works right to the letter, or make a practice trial if you will go to this yard or road, or that, and see them in operation, where the engineer knows to a certainty just how much of a move he is going to make. It works perfectly; it is an undoubted success, and many of them are so, to speak of certain instances; but take it in darkness and in storms, when you cannot see two feet—no; not one foot—ahead of you. The only light you have—and it ties one hand up and you are obliged to work like a one-armed man—is a lamp that will throw a light two feet in diameter. You work by signals. The sleet and the storm is such that you can hardly face it and stand upon your feet. The companies—and it is right that they should—expect their work to be done and the commerce of the country to be moved systematically and on time. We have got, as the saying is, to get there. My comrade, if I have charge of the engine, is back coupling cars and my other comrade is engaged in cutting off the cars, making up trains, and we are handling on an average of three to five hundred cars a night or day. You understand that a full complement is three men. That man does not know, and it is impossible for him to know, whether the car has a vertical type or the ordinary link and pin. He sees the car coming, and, running across several tracks, he has barely time to pick up a link and pin; and it is not so easy to put the link and pin in the vertical as in the ordinary one, but he gets it in, and he has just a second, sometimes hardly that, to protect his life and limb.

Another feature I want to bring to your attention. The

difference in height should certainly be taken into consideration. I have seen, and that not more than a month ago, two couplers of this Master Car Builders' type—both of them of the standard and automatic type, as they are termed—where the lower lip of the hook or knuckle, so called, of one car and the upper lip of the knuckle of the other barely came in contact enough to catch. Then the hand-hold, something that a man can keep one hand on while he puts his other in danger, we have not got that. Now, gentlemen, that is a situation we meet daily, hourly, and minutely, each and every day in the year.

Mr. Chairman and gentlemen, I agree with the gentleman from New York, and I say again that you ought to do something in this direction; otherwise one corporation will put on this appliance and another one that appliance. One state says one thing and another says another thing. I am satisfied from my experience that the railway companies would be glad to know what they have to do, and not be compelled to expend so many thousand dollars for this type, and that type, and barely get it into use at an enormous expense when they have to change to another. That much money has to be thrown away and they have to go to another expense.

But, gentlemen, our little ones, our wives and children, and ourselves want some action taken, and we think, thanking you one and all for the attention and the courtesy that you have extended to me as a member of our organization and in behalf of the others, if you will select your committee—and we will only be too glad to meet its members under your sanction—that we can come to some satisfactory conclusion, one that will be satisfactory to all, and we can settle for once and for all this question of a standard coupler of uniform type and standard height; and again, gentlemen, I wish to say that we as an organization and I as an individual care not what the type is; we care not whether it is a link and pin or a vertical type, but in our convention at Buffalo we

followed the old adage—of two evils choose the least—recommending the adoption of a standard link and pin, and automatic draft bar with a recess in the head to protect the hand. We know what the vertical type is and what the link and pin is; and on that point we do not think enough attention is paid to cutting off cars. It is almost the universal opinion that the coupling, the act of coupling the cars, causes all this danger. I can show that in the month of February there were only two cases where we paid death insurances, out of nine, that it was from coupling cars. Two-thirds, at least, of our members of the brakemen's and switchmen's organizations meet death and total disability pulling pins and cutting off cars, whether the type be of the vertical or otherwise. Each car is cut separately. There are all manners of cars, from all over the United States, with different couplers, different platforms, and the man doing the work has no time to examine the type of bar, he has something else to do preliminary to cutting off the cars. The man who pulls the pins must notice the cars as pulled by him; he must notice what division each will go on, what track it will go to, and where he makes his cut; the only time he has to see what kind of type the couplers are is the second he goes in between them to cut the cars, and you can realize the position we stand in when we go between cars and instead of finding a link and pin find some patent article. Gentlemen, sometimes we feel like throwing them into the lake and the patentee with them, but of course we do not mean all we say.

Mr. KING: Let me ask the gentleman a question. Is there any trouble about selecting a good coupler, one that would be standard and all right, from the Master Car Builders' type?

Mr. STARBIRD: Would there be any trouble?

Mr. KING: Yes. Are there as good couplers of that type as any?

Mr. STARBIRD: Well, the gentlemen will have to excuse me, because I am not authorized to favor——

Mr. KING: I do not mean that you shall favor any.

Mr. STARBIRD: Personally, I will put it in this way, in answer to the question of the gentleman, as best I can; I am not authorized to favor the Master Car Builders', or any others. I will say simply and solely, from personal experience of twenty-three years, yard and train service—and I have occupied a good many different positions—as far as I am concerned give me the Master Car Builders' type or give me the link-and-pin type, but give me uniformity, so that I may know that it is one and the same thing, wherever I find it. Gentlemen, I have coupled cars a good many years, but fortunately I have just that much in the way of an injury (showing his hand); only a trade-mark. Very few come out that way from between two solid buffers. I was very fortunate. It is as easy for me to make a coupling when a car is coming at the rate of ten or fifteen miles an hour as it is for you, gentlemen, to perform the duties of your different avocations—to use a pen, for instance. If the car itself is in safe condition—but unfortunately it is not, a great many times—if the car is of standard height, so that I can depend on what chances I am taking, I am safe enough with the link and pin.

I will say, in conclusion, that we are willing to meet a committee from the Master Car Builders' Association or a committee from the Master Mechanics' Association, whoever they are to be. We are the ones in danger from these different inventions. We are, to speak plainly, between the devil and the deep sea. We cannot say, and have no power to say, what couplers they are to use. We have got to earn our bread and butter. We may object to the couplers that they adopt. We have one more privilege than the soldier; we can quit.

Mr. BRUNSWIG: From your remarks I infer that your preference is simply for uniformity of design in these couplers.

Mr. STARBIRD: Yes, sir.

Mr. KING: I do not know that I can say much about this, but it occurs to me that we want to get at one special thing, and I think we can very easily get at it without saying quite as much as some of these resolutions express. One resolution, that of my friend from Iowa, includes both the state and national governments. I do not think that we want anything to do with state legislation. I think that is the last thing we want to touch. We want the state to keep its hands off, and we want this legislation by the Congress of the United States. We also want one other thing. We want a uniform coupler of an automatic kind, and we want also some appliance for air-brakes, and we want Congress to pass the law. Now we know what we want.

Mr. SMITH (Iowa): How are you going to provide for railroads that do not cross state lines?

Mr. KING: They have interstate commerce, but if you have any little roads that have no interstate commerce the states could pass the necessary legislation; but what we want is a national law, and we do not want the states to meddle with it. I do not; if the Convention does it is all right; but I want a national law. If there is any one thing I am thoroughly impressed with it is that the time has come when we ought to move in this matter—when we ought to act. I do not think that it is needful that this Committee should report to any other Convention. I do not think the next Convention would know a great deal more of the subject than we do to-day. My idea is that a committee be appointed, of seven, say, to present this matter to Congress, and that they ask immediate action. It seems to me something like this would fill the bill:

Resolved, That it is the sense of the Convention that the time has fully come when national legislation should be

speedily adopted by Congress fixing a uniform automatic coupler of the Master Car Builders' type for use in the United States, and that a committee of seven be appointed by the Chairman of this Convention to urge the passage of such a law by the next Congress; and that the law should also provide for suitable air-brakes on all passenger and freight trains; and that such committee confer with the Master Car Builders' Association and the Switchmen's Association, and actively press the matter to a conclusion.

Mr. SMITH (Iowa): While you define the title of coupler why don't you define the title of air-brake?

Mr. KING: I cannot do it. I do not know nor does this Convention know how to do it. I do not think if we should say what we want that it would be such authority as the Congress of the United States would be authorized to accept. We are not the men who have knowledge of the matter as to what this should be. It is a matter which cannot be decided without a conference with the Master Mechanics', the Car Builders' and the Switchmen's Association.

Mr. SMITH (Iowa): What would be the purpose of conferring with the Car Builders' and these other associations after you have adopted the type of coupler?

Mr. KING: The Master Car Builders' coupler is only a certain type, not a certain patent. The Master Car Builders' type, as I understand it, has a uniform height and character. There are dozens of them. I do not believe it would be right or proper for us to say what one should be adopted, but you can say that a certain type should be adopted.

Mr. SMITH (Iowa): In order, if possible, to make some progress I desire to move that the name of Mr. Coffin may be stricken out of my substitute, and I desire to add thereto that this committee, when appointed, shall be continuous until the next meeting of the Convention, and that they may invite in conference representatives from the Master Car Builders' Association, the Switchmen's Association, the Trainmen's Association, the Car Inspectors' Association, and the Master

Mechanics' Association. I simply add that to my substitute and ask that it be taken up and considered.

Mr. HAGER: May I suggest to my friend that this committee, if appointed, have power to act and be continuous. We do not meet again for a year, but Congress meets in December. The committee might perfect and present the bill to Congress next December.

Mr. KING: That is my idea exactly.

Mr. CROCKER: In order to improve somewhat the motion which I originally made I desire to make an addition to it so that it will read as follows:

That a committee of five be appointed by the Chair to urge upon Congress, as soon as possible after the opening of its next regular session, the imperative need for action by that body, calculated to hasten and insure the equipment of freight cars throughout the country with uniform automatic couplers and train brakes; and that said committee, before presenting its views to the appropriate Congressional committee, be requested to give a hearing in the city of Washington to such persons, duly accredited representatives of organizations of railroad officials or employees, as may desire to be heard.

Then there might be added the following resolution:

That in our opinion the experience of the past year leads us to reaffirm the resolution of last year endorsing the Master Car Builders' type.

My object, Mr. Chairman, in offering these resolutions is this: It has seemed to me that while we might endorse the Master Car Builders' type of coupler at this meeting it may not be expedient for us to urge upon Congress the passage of a law definitely adopting that type; but what we want to do is to take some action here which shall lead Congress to take steps toward securing that uniformity which every one desires. It seems to me that that would leave the question in the freest and the best way—the most effective way. We shall have the best chance of getting something done if

we put the resolution in that general shape, leaving it largely to the committee of five or seven appointed by this body, after conferring with the representatives accredited from these organizations of employees and officials, to determine exactly what should be asked for, and leaving it also to the discretion of the members of that committee, if they find they cannot get exactly what they want, to strive for the next best thing.

Mr. ROGERS: Do I understand that your proposition is that when this committee to be appointed by the Chair shall have drafted a bill after conferences with these different committees from the different railroads, the particular kind of coupler shall be stated and defined in the bill, or that it shall be left to Congress to do that?

Mr. CROCKER: My own impression is that it is inexpedient to do that in the bill. I, however, would leave that entirely to the committee to decide after consultation with those interested. I desire to state, in order to show what my own views were a year ago (of course they are subject to change), that I drafted and submitted to Senator Hoar the following bill, which he presented to Congress:

A BILL

To secure the safety of freight cars employed in interstate commerce by the use of proper couplers, freight-train brakes, and other appliances prescribed by the Interstate Commerce Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission is hereby instructed, after such investigation as it may deem expedient, to prescribe the conditions which freight cars used in interstate commerce shall fulfill in order to secure, as far as possible, the safety of all persons employed thereon. For the purpose of making such investigation said Commission may employ experts and incur such other expenses as may seem to it necessary or expedient.

SEC. 2. That when the Interstate Commerce Commission has prescribed and announced by public advertisement the

conditions to be fulfilled by freight cars used in interstate traffic every common carrier doing an interstate business shall, in the construction and equipment of all freight cars thereafter constructed or purchased by it, and of every freight car repaired by it, comply with and fulfill the conditions prescribed by the Commission, and shall also place on each freight car thereafter constructed or purchased by it, and upon each freight car repaired by it, appliances fulfilling the conditions prescribed by the Commission, and from and after a certain date, to be fixed by the Commission, not less than three nor more than five years from the time when the order is issued, no freight cars shall be used in interstate traffic unless they fulfill the conditions prescribed by the Commission.

Then follows a section relating to penalties. The object of that was to provide for a thorough investigation by an independent commission, such as the Interstate Commerce Commission. We are well aware that the members of the Interstate Commerce Commission are not engineers, are not mechanics, but we do believe that they are able to decide this matter wisely upon information which they can command. It has got to be left with somebody. It seems to me that it is expedient that this committee should not be hampered by any draft of a law which we might draw up at the present time, but should have the full field open to it, only the goal being marked out, that it shall strive to secure some action by Congress which shall hasten the equipment of cars with uniform automatic couplers and train brakes.

Mr. FREEMAN: Mr. Chairman, we have four sets of resolutions before us now upon this one subject. There are some parts of each which suit me. I like the resolution of the gentleman from Iowa particularly, because in addition to the coupling business he puts in train brakes and the brakes on driving wheels of locomotives, and also the car stove, which is one of the things which should go into that same act to be passed by Congress. I therefore move that a committee of three be appointed by the Chair, to whom these four

resolutions shall be referred, to report to this Convention at two o'clock to-day, and to make a consolidation of those four resolutions, or prepare such a resolution as they can agree upon to bring out the salient points of the four, so that we may act upon them. If that is not to be done we certainly ought to have the four separate resolutions in print before us, so that we can compare them. We cannot, from this hasty reading of them, see what are the principal features of these four resolutions.

I therefore make the motion that I do.

The CHAIRMAN: We have here an original resolution, and then we have three substitutes to that resolution, that in succession have been offered. I would suggest to the Convention whether it would not be well that the gentlemen who have offered this resolution and the substitutes should compose that committee, with, perhaps, another gentleman appointed for the purpose of acting as chairman of the committee.

Mr. FREEMAN: I would be very glad to have that done.

The CHAIRMAN: Let the committee then consist of five. Is that accepted?

Mr. FREEMAN: Yes, sir.

Mr. CROCKER: Mr. Chairman, I would suggest that perhaps it would be better to have an entirely new committee.

Mr. FREEMAN: On the contrary, I think the suggestion of the Chairman is an excellent one, for these gentlemen evidently know what are the points of their own resolutions and can present them to each other. I have no doubt they can agree upon something that will be satisfactory to us all.

The CHAIRMAN: I will appoint as that committee Mr. Freeman—

Mr. FREEMAN: I ask to be excused from serving on that committee. I did not make the motion for that purpose. I want somebody else to serve.

The CHAIRMAN: Then I will appoint—

GEORGE M. WOODRUFF, of Connecticut.

GEORGE G. CROCKER, of Massachusetts.

WILLIAM E. ROGERS, of New York.

SPENCER SMITH, of Iowa.

JOHN H. KING, of South Dakota.

And their report will be the special order this afternoon for two o'clock.

REPORT OF COMMITTEE ON REASONABLE RATES.

Mr. FLEMING: I rise to a privileged question. There is some misunderstanding about the form in which the resolution with reference to reasonable rates has been adopted, and I desire, with the permission of the Chair, to have it corrected. Mr. Secretary, will you read the resolution on reasonable rates as adopted?

The Secretary read as follows:

That it is within the power of Congress and the state legislatures to delegate the power of reasonable regulation of rates to boards of commissioners, and to make their acts and findings upon questions of fact, after fair legal opportunity to be heard, as conclusive and binding as the findings and acts of other administrative officers.

Mr. FLEMING: The words "upon the courts" should be inserted there after the word "binding."

Mr. ROGERS: It was passed with those words stricken out.

Mr. FLEMING: My motion did not so provide.

Mr. MORRISON: I don't know how we can go back to this question without unanimous consent.

Mr. FLEMING: It is a privileged question.

Mr. MORRISON: I favored the right of the committee represented by Mr. Fleming to perfect the resolution or put it in form satisfactory to the committee. I did not myself ob-

serve a substantial difference between what the committee proposed and Mr. Mortland's substitute for the committee's amended resolution with the words "binding upon the courts" as a part of it. The meaning would probably be the same with these words in or out. Still, as they were part of the original resolution, the purpose of leaving them out might be misinterpreted. The Interstate Commerce Commission and the railroads should conform to and obey the law, and the courts are no less obliged to conform to the law than the roads and the Commission.

Mr. FLEMING: The point I am making is that they are not out. I didn't move to strike them out, and nobody else did, so that they are still in.

Mr. FREEMAN: The gentleman from Kentucky did not, in his motion to strike out, move to strike out those words; but when the resolution was read by the Chair those words were not in, as I remarked to the gentleman by my side, and I took a pencil and struck them out on my copy; and the resolution was adopted with those words out.

The CHAIRMAN: That is true. They were stricken out at the desk by the clerk.

Mr. FLEMING: It is a mere clerical error, and I want to correct the record. I now move to correct the record.

Mr. WOODRUFF: I move to reconsider the vote by which that resolution was passed. Then the question can be acted upon.

The CHAIRMAN: The motion is that the vote by which the resolution was adopted be reconsidered.

The motion was agreed to.

The CHAIRMAN: The question now recurs upon the adoption of the resolution with the words referred to inserted. I understand Mr. Fleming to say that his amendment, as he made it, did not strike out those words. I certainly understood it so at the time, for I was surprised to see those words

left out. The question, then, is upon inserting in the resolution as amended those words that were accidentally stricken out at the desk.

Mr. WHITMAN: Will the Secretary read the resolution?

The Secretary read as follows:

That it is within the power of Congress and the state legislatures to delegate the power of reasonable regulation of rates to boards of commissioners, and to make their acts and findings upon questions of fact, after fair legal opportunity to be heard, as conclusive and binding *upon the courts* as the findings and acts of other administrative officers.

The CHAIRMAN: That is the way that I understood the motion to stand after it had been amended. When it was passed up to me to be finally submitted I found those words stricken out, and I supposed it had been done by Judge Fleming.

Mr. FLEMING: No, sir; it was not done by my motion.

Mr. HIMES: Inasmuch as we have consumed a great deal of time this morning and the session is likely to be somewhat prolonged, I rise to say that I hope this matter can be speedily disposed of. So far as I understand it, the adoption of this resolution with the words in—"upon the courts"—is about the same as with them out. Who else are they to be binding upon except the courts? I think it means that.

Mr. FREEMAN: Mr. Chairman, the gentleman raises the point, Does this resolution mean anything except that they shall be binding upon the courts? Are they to be binding upon anybody else? "And to make their acts and findings upon questions of fact, after fair legal opportunity to be heard, as conclusive and binding upon the courts as the findings and acts of other administrative officers"—

Mr. KING: I would like to explain that as I understand it. The findings of the Commission will be to the courts and to everybody else just the same as if a court had found that thing or as if it was a verdict of a jury. No one, after

the railroad commissioners have passed upon a matter, can take it into a court *de novo* and try it over again and set aside the findings of the commissioners. It stands as a verdict. Their only course is to show a right of appeal or something of that kind. It is the law of the land, binding upon everybody until it is properly reversed.

Mr. FREEMAN: Does it express that? Does it show it? If it does I have nothing to say.

Mr. KING: I think so, clearly. It does not exclude anybody.

Mr. FREEMAN: If it mentions the courts, does it not thereby exclude everybody else?

Mr. KING: No; not necessarily.

Mr. ROGERS: If that is your understanding of it, it seems to me the language is ambiguous. It says that "it is within the power of Congress and the state legislatures to delegate the power of reasonable regulation of rates to boards of commissioners, and to make their findings upon questions of fact," &c. That would be a finding as to whether the railroad had charged thus and so, but the reasonableness of the charge would not come under consideration in that matter.

Mr. KING: They find the reasonableness.

Mr. ROGERS: The reasonableness is not a matter of fact; it is a matter of opinion.

Mr. KING: That is what they find.

Mr. ROGERS: "The power of reasonable regulation of rates." Now, then, the reasonable regulation, I submit, is not a matter of fact, but a matter of opinion depending upon a great variety of things. The matter of fact is whether the railroad companies have charged this sum of money for this transportation, it seems to me.

Mr. KING: They find, as a matter of fact, whether those railroad companies have charged a reasonable or an unreasonable rate. That is a finding of fact that they pass upon.

Mr. MORTLAND: If the interpretation put upon it by the gentleman from South Dakota is right, then I say I have more objections to it than I had at first. It then comes to this: That the findings of a Commission upon any matter raised shall be final, without appeal.

Mr. KING: No; I said you had an appeal, but it stood the same as the findings of the court, unless it was appealed; that it stood as the findings of a court, as the findings of a jury, and the only way to review it was upon appeal provided for, and that it had the same force.

Mr. MORTLAND: That is not the language. My substitute would have remedied that, but that was voted down, and now you have something that goes a great deal farther.

Mr. FLEMING: The resolution explains itself. It says "as binding upon the courts as the acts and findings of other administrative officers."

The CHAIRMAN: Will you take the question by yeas and nays?

The yeas and nays were ordered, and the Secretary proceeded to call the roll. The result was announced—yeas, 28; nays, 6—as follows:

YEAS—28.

Woodruff.
Himes.
Wheeler.
Crim.
Luke.
Campbell.
Smith, (Iowa.)
Fleming.
Hager.

Brunswick.
Crocker.
Whitman.
Williams.
Teisberg.
Benton.
Allen.
Slotten.
Stewart.

Brown.
Duncan.
Jervay.
King.
Davis.
Watson.
Hill.
Thompson.
Morrison.
Bragg.

NAYS—6.

Mortland.
Stevens, (Mass.)

Rogers.
Rickard.

Smith, (Ohio.)
Freeman.

So the resolution was agreed to.

APPOINTMENT OF COMMITTEES.

Mr. WOODRUFF: I move that the Chairman have power to fill all the committees after the adjournment of this Convention; that the Chairman be permitted to complete the committees named or ordered, after the adjournment.

The CHAIRMAN: If that is done they will be appointed soon enough to go into the printed record of the proceedings.

The motion was agreed to.

Mr. FREEMAN: I move that we take a recess until two o'clock.

The motion was agreed to.

At the expiration of the recess the Convention reassembled.

REPORT OF COMMITTEE ON RESOLUTIONS RELATING TO SAFETY APPLIANCES.

Mr. WOODRUFF: The committee which was appointed this morning, to whom were referred four resolutions in regard to safety appliances, has prepared a set of resolutions, as directed by the Convention, combining the principal features of all the resolutions which were referred to the committee, and moves their adoption. The resolutions reported by the committee are as follows:

First. That a committee of five be appointed by the Chair to urge upon Congress, as soon as possible after the opening of its next regular session, the imperative need for action by that body calculated to hasten and insure the equipment of freight cars throughout the country with uniform automatic couplers and with train brakes, and the equipment of locomotives with driving-wheel brakes, and present and urge the passage of a bill therefor.

Second. That the committee, before presenting the bill to the appropriate Congressional committee, be requested, after public notice, to give a hearing to accredited representatives

of such organizations of railroad officials or employes as may desire to be heard.

Third. That the Secretary of this Convention act as secretary of this committee.

The motion was unanimously agreed to.

COMMITTEE ON REASONABLE RATES.

Mr. HIMES: I desire to offer a resolution, but before doing so I wish to state that by resolution the officers of this Convention have been made officers for one year, and the other committees have been continued over, but no action in that respect has been had in regard to the Committee on Reasonable Rates. The resolution is as follows:

Resolved, That the Committee on Reasonable Rates be continued, and be instructed to report to the next Convention such further facts and suggestions in connection with the question of reasonable rates as by it shall be deemed proper.

The CHAIRMAN: The resolution has been heard. Is there anything to be said upon it?

Mr. FLEMING: I would like to make a suggestion if that resolution is to be passed. One or two members of that committee have not been able to be very active in the work assigned the committee, and I would like to suggest, if there is no objection, that there be added one or two members to the committee, with the understanding that any three of them constitute a quorum. The difficulty, Mr. Chairman, about these committees is to get them together. They are separated oftentimes by many hundreds of miles, and sometimes it is difficult to get a quorum. My suggestion is to add two more members to the committee, with the understanding that any three of them, after due notice to the other members, may constitute a quorum at any meeting.

The CHAIRMAN: May I ask a question? Can you tell, Judge Fleming, whether these commissioners composing this committee are still all in office?

Mr. FLEMING: Yes, sir; they are all still commissioners.

The CHAIRMAN: So that no vacancies have really occurred?

Mr. FLEMING: No, sir.

Mr. HIMES: Mr. Chairman, I have no objection to enlarging the committee. I think it would be eminently proper to continue this committee, as the others have been continued.

The CHAIRMAN: The question now before the Convention is on the adoption of the resolution offered by Mr. Himes.

Mr. FLEMING: I offer to amend by adding the words—

Mr. HAGER: It had better first be determined whether the committee will be continued.

The CHAIRMAN: The question is on the adoption of Mr. Himes' resolution, which has been read.

The resolution was agreed to.

Mr. FLEMING: Now I move, Mr. Chairman, that two other commissioners be added to this committee, to be appointed by the Chair, and that any three members of the committee so constituted may be a quorum in the absence of the others, after due notice of meeting.

The CHAIRMAN: The motion is made by Judge Fleming that two additional members be added to this committee by appointment of the Chair, and that after due notice of meeting three members of those present shall constitute a quorum. The question is on agreeing to the motion.

The motion was unanimously agreed to.

SAFETY APPLIANCES.

Mr. WOODRUFF: Mr. Chairman, I have two communications, which are in the hands of the Committee on Order of Business—one from the Grand Lodge of the Brotherhood of Railway Carmen and the other from Mr. J. B. Thomas—on the subject of car-couplers, and I ask that they be referred to the committee on that subject.

The CHAIRMAN: That seems to be the proper disposition of them.

Mr. FREEMAN: I offer the following resolution:

Resolved, That the committee to whom the subject of automatic couplers and continuous train brakes has been referred be requested to consider and report to the next Convention of Railroad Commissioners upon the expediency of requesting national legislation upon the subject of lighting and heating of passenger cars.

The CHAIRMAN: The Convention has heard the resolution. Is there anything to be said on it? If not, I will put the question.

The resolution was agreed to.

The CHAIRMAN: What is the further pleasure of the Convention?

TIME AND PLACE OF HOLDING NEXT CONVENTION.

Mr. ROGERS: If there is nothing further before the Convention I presume that a motion to adjourn would be in order, as in fact it is always in order, but before making that motion it seems to me desirable to have some expression of opinion on the part of the Convention as to the time of the next meeting. I know that in conversation with a number of members of this Convention more or less dissatisfaction has been found with the time of the year of this meeting—the third of March—the expiring days of Congress, when the hotels are very crowded and when the public are very much taken up with other matters, so that the questions before this Convention do not receive the public attention which, perhaps, their importance merits. It seems to me that when the time is set down for the meeting of the next Convention of Railroad Commissioners it would, perhaps, be well to put it in April instead of March; and, with that idea in view, I suggest that the next meeting of this Convention be held in the city of Wash-

ington, and, if agreeable to the Interstate Commerce Commissioners, here in this room ; and I should say upon the first Tuesday of April.

Mr. FREEMAN: I shall have to object to the time. Our annual State election takes place on the first Wednesday in April, and I expect to be there.

Mr. WHEELER: It seems to me, Mr. Chairman, that it would be better to leave that question with a committee to be appointed by the Chair to act with the Chairman of this Convention in fixing the time and place for holding the next Convention, and I move that a committee of five be appointed, of which the Chairman of this meeting shall be chairman, to call the next Convention, and that the call shall be made for such time and place as the committee shall designate.

The CHAIRMAN: Time and place were left to the committee last year. I ought to say for the committee that when it came to deal with that question great difficulty was found in fixing upon the time for holding the Convention. There was a very strong expression that the time fixed the year before was too late, and the time of our present meeting seemed to be the most appropriate one for this year that could be fixed upon. I am sure if any committee be appointed for the purpose of calling the Convention its members would be very glad, indeed, if this Convention should relieve them of the responsibility of fixing the time, for we found it very difficult last year.

Mr. WHITMAN: Mr. Chairman, I think it would be much easier for the Commissioners who are here now to anticipate a date when all would be at liberty next year than for a committee to provide for it hereafter. I think perhaps a date might be fixed by a committee when it would be impossible for me to attend. It might be left for the committee to settle where it was to be held. I make a motion, Mr. Chairman, that it be the second Wednesday in April. I will change it to the second Tuesday.

The CHAIRMAN: I understand that you make that as an amendment to the motion which has already been made.

Mr. WHITMAN: Yes, sir.

Mr. ROGERS: What is the motion?

Mr. WHITMAN: That the second Tuesday in April be fixed for the meeting of the next Convention.

Mr. WOODRUFF: It is desirable to have a committee, and it will not trammel the committee if we instruct it to call the meeting on the second Tuesday in April.

Mr. ROGERS: Are these committees usually instructed to suggest subjects for the consideration of the Convention?

Mr. WOODRUFF: They have been instructed to do so.

The CHAIRMAN: The motion that was offered was a motion for the appointment of a committee of five to call the next Convention at such time and place as should be determined upon by that committee. Now, it is moved to amend that resolution by instructing the committee to call the meeting on the second Tuesday of April. The question now is upon the amendment of the resolution as offered. Possibly the mover of that resolution would accept the amendment.

Mr. WHEELER: I accept the amendment.

The CHAIRMAN: The question is, then, on the resolution as amended.

Mr. ROGERS: Kindly have the resolution read?

The CHAIRMAN: Gentlemen, this is the resolution offered by Mr. Wheeler with the amendment of Mr. Whitman incorporated:

That a committee of five be appointed, of which the Chairman of this meeting shall be chairman, to call the next Convention, and that the call shall be made for the second Tuesday in April of 1892, at such place as the committee shall designate.

Mr. JERVEY: I move to amend that by inserting "Washington" instead of "such place as the committee shall designate."

The CHAIRMAN: Do you accept that amendment, Mr. Wheeler?

Mr. WHEELER: There may something arise that will render it impolitic to hold the Convention at that time in Washington, and I prefer to leave it to the committee. I trust and believe that the Chairman of this Convention, with his good, sound, solid sense, will appoint as his colleagues upon that committee men that will show sense in the calling of that Convention. I think it entirely unnecessary to designate Washington.

Mr. HAGER: I rise to support the amendment proposed by the commissioner from South Carolina. Last year this Convention by a vote, after a full consideration of the question, refused to go to Lexington, and refused in favor of Washington. Now, if the Convention cannot go to Lexington there is no other place for it in the United States except Washington.

The CHAIRMAN: The gentleman is a little mistaken in his facts. The matter last year was left to the committee, and of that committee of five three of the state members decided that the meeting ought to be held here.

Mr. HAGER: I mean that by a vote of the Convention it refused to select Lexington as a place of meeting.

Mr. MORTLAND: It seems to me that it would be more convenient for those who come from a distance if the Convention were held on Wednesday and Thursday instead of Tuesday and Wednesday. Many of us have to start on Sunday to get here on Tuesday, but if the Convention began on Wednesday we should not have to start before Monday.

The CHAIRMAN: There is already an amendment pending which should be disposed of first. The amendment proposed now is one that requires the call to be made for the second Tuesday in April, in the city of Washington, instead of such place as the committee shall designate. Are you ready for the motion?

Mr. ROGERS: I would simply suggest, if it is agreeable to the Interstate Commerce Commission to have the Convention meet here, that there are obvious advantages in meeting here over any other locality. The records are all here, and there are facilities here for printing the proceedings, as was exemplified by the marvelous rapidity with which we received the proceedings of yesterday in complete and printed form this morning. I do not know where all these conveniences can be obtained as they can here, and, other reasons aside, it seems to me there is good reason for our meeting here.

Mr. JERVEY: I should presume, from the previous invitations we have received, that the Interstate Commerce Commission will be glad to receive us here in the future.

The CHAIRMAN: I can assure you, gentlemen, that we are very glad to meet you here, and if all the others had come we should have been equally glad to meet them.

The amendment was agreed to.

Mr. MORTLAND: Now, I would move to substitute Wednesday instead of Tuesday.

The amendment was agreed to.

The CHAIRMAN: Now the question is upon the resolution as amended—that a committee of five be appointed, of which the Chairman of this meeting shall be chairman, to call the next Convention, and that the call shall be made for the second Wednesday in April of 1892, at Washington. Is there anything to be said upon it?

The resolution as amended was agreed to.

TICKET BROKERAGE.

Mr. JERVEY: Some time during last July or August the Interstate Commerce Commission sent around circulars in regard to ticket scalping. I should be glad to know if anything has been done in regard to the matter since our replies were received.

The CHAIRMAN: I may as well respond to that question now, if I may be permitted to do so. The gentleman will find a considerable discussion of that whole question incorporated in the report of the Commission that has just been issued, and that the replies received, not only from railroad men, but also from the commissions, are appended to that report. There is quite a body of testimony on the evils of the whole system of railroad ticket scalping, and a very strong recommendation is made that there should be legislation upon the subject. The laws of the states and of some other countries are collected in that report.

Mr. JERVEY: I did not receive that report till I came here, and have not looked into it.

The SECRETARY: It was only received from the printer yesterday morning.

The CHAIRMAN: Upon that subject I think it would be well if the Committee on Railway Legislation would give it some attention next year, and I have no doubt it will do so. Is there any further business before the Convention?

RESOLUTIONS OF THANKS.

Mr. WHEELER: I desire at this particular point of the proceedings to offer the following resolution:

Resolved, That we hereby express our thanks to Hon. Edward A. Moseley, the Secretary of this Convention, for his services to the members and committees of this Convention, and of past Conventions, and to the several railroad commissioners of the country, whenever opportunity has offered.

I offer this as a tribute of respect.

The CHAIRMAN: Gentlemen, you have heard the motion. Is anything to be said upon it?

Mr. ROGERS: I heartily concur in the motion, but I would move to amend it by inserting the name of the Chairman and extending to him also the thanks of the Convention.

for the able and impartial manner in which he has presided over it.

Mr. WHITMAN: I have a special resolution on that subject.

The CHAIRMAN: The question is upon the resolution of Mr. Wheeler as read.

The motion was unanimously agreed to.

Mr. WHITMAN: I wish to offer this resolution:

Resolved, That the thanks of this Convention be extended to Hon. Thomas M. Cooley for his able and courteous performance of the duties of Chairman of this Convention.

The resolution was unanimously agreed to.

REPORT OF COMMITTEE ON ORDER OF BUSINESS.

Mr. WOODRUFF: Mr. Chairman, the Committee on Order of Business, in pursuance of the authority heretofore given, report, that a committee of five on Discriminations from the Use of Private Cars of Shippers, and a like committee on Territorial Assignment of Statistics of Operation, be appointed by the Chairman; and that they have nothing further to present.

The CHAIRMAN: If there is no objection the report will be accepted, and if there is no further business before the Convention a motion to adjourn will now be proper.

ADJOURNMENT.

Mr. WOODRUFF: I move that we now adjourn.

The motion was agreed to; and accordingly (at 3 o'clock p. m.) the Convention adjourned.

On the adjournment of the Convention the Chairman filed with the Secretary the appointments to committees which had been authorized to be made by him, and these, together with the committees, continued from the last session, appear in the preliminary pages of this report.

INDEX.

	PAGES.
Address of Chairman Cooley.....	14
Adjournment.....	160
Association of American Railway Accounting Officers.....	8
Committees, appointment of.....	32, 112, 116, 118, 146, 151, 152, 153, 156, 158, 160
Committees for the Business of this Convention :	
Order of Business.....	3
Railway Legislation.....	3
Reasonable Rates.....	4
Resolutions Relating to Safety Appliances.....	145
Uniformity of Railway Accounts.....	4
Committees to report to next Convention :	
Discriminations from the use of Private Cars of Shippers.....	5
Railway Legislation.....	5
Reasonable Rates.....	4
Territorial Assignment of Statistics of Operation.....	5
To Call Next Convention.....	5
To Secure Congressional Action in Regard to Safety Appliances.....	4
Uniformity of Railway Accounts.....	4
Congressional action in regard to safety appliances.....	126, 151
Committee on.....	4
Remarks of George E. Starbird.....	135
Resolutions relating to.....	126, 127, 129, 140, 142, 151, 154
Cooley, Chairman, Address of.....	14
Discriminations from the use of private cars of shippers.....	39, 160
Address of A. Schoonmaker.....	39
Committee on.....	5
Resolution relating to.....	47
List of persons present at convention.....	11
Members of Convention.....	6
Next Convention :	
Committee to Call.....	5
Committees to Report to.....	4
Time and place of holding.....	154
Order of Business.....	39, 93, 153
Committee on.....	3
Report of.....	33, 39, 153, 160
Organization of Convention.....	3, 13
Proceedings of Convention.....	9
Second day.....	113
Railway Accounting Officers, American Association of.....	8

II

INDEX.

	PAGE
Railway accounts, uniformity of	94
Committee on	4
Report of	94
Railroad cars, safety appliances for	125, 151, 153, 154
Committee to secure Congressional action in regard to	4
Remarks of Geo. E. Starbird	135
Resolutions relating to	126, 127, 129, 140, 142, 151, 154
Railway Legislation	34, 47, 116
Committee on	3, 5
Report of	34, 47, 116
Reasonable rates	50, 119, 146, 152
Committee on	4
Report of	50, 119, 146
Resolutions relating to	81, 120, 124, 125, 146, 148, 152
Reports of Committees :	
Order of Business	33, 39, 153, 160
Railway Legislation	34, 47, 116
Reasonable Rates	50, 119, 146
Uniformity of Railway Accounts	94
Resolutions relating to safety appliances	151
Resolutions relating to safety appliances, Committee on	146
Report of	151
Resolutions :	
Reasonable rates	81, 120, 124, 125, 146, 148, 152
Safety appliances for railroad cars	126, 127, 129, 140, 142, 151, 154
Time and place of holding next Convention	156, 158
Of Thanks	159, 160
Safety appliances for railroad cars	125, 151, 153
Committee to secure Congressional action in regard to	4
Remarks of Geo. E. Starbird	135
Resolutions relating to	126, 127, 129, 146, 142, 151, 154
Schoonmaker, A., Address of	39
Starbird, George E., Address of	135
Statistics of operation, Territorial assignment of	113, 160
Committee on	5
Switchmen's Mutual Aid Association of North America	134
Territorial assignment of statistics of operation	113, 160
Committee on	5
Thanks, resolutions of	159, 160
Ticket brokerage	158
Time and place of holding next Convention	154
Resolutions relating to	156, 158
Uniformity of Railway Accounts	94
Committee on	4
Report of	94







